

SPECIAL BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Special Business Meeting)
)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, SEPTEMBER 9, 2003
10:03 A.M.

Reported by:
Peter Petty
Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Robert Pernell

John L. Geesman

STAFF PRESENT

Robert Therkelsen, Executive Director

William Chamberlain, Chief Counsel

Betty McCann, Secretariat

Connie Bruins

Gary Fay

Garret Shean

Caryn Holmes

Kristy Chew

Susan Gefter

Paul Kramer

Robert Eller

ALSO PRESENT

Ed Western

Ray Smith

Scott Galati, Attorney

Les Ward

John McLemore

Jennifer Sparacino

Jim Pope

ALSO PRESENT

John Roukema

Jim Shetler

Steve Cohn, Attorney

Susan Patterson

Genevieve Shiroma

Colin Taylor

Kevin Hudson

Kathy Peasha

Mike Roskey

Gary Livaich, Attorney

James Pellandini

Sandra Pellandini

Alex DeLu

Karin Schwab, Attorney

Delores Gregorio

Matt Kelly

Taylor O. Miller

Joseph Rowley

Corey Briggs, Attorney (teleconference)

James Shoemaker (teleconference)

I N D E X

	Page
Proceedings	1
Meeting Schedule	1
Items	1
1 Consent Calendar	1
2 Midway Sunset Cogeneration Project	1
3 Pico Power Project	5
4 SMUD Cosumnes Power Plant Project	13,105
5 Palomar Energy Project	79
6 Palomar Energy Project	99
7 Minutes	114
8 Commission Committee and Oversight	114
9 Chief Counsel's Report	114
10 Executive Director's Report	114
11 Public Adviser's Report	115
12 Public Comment	115
Next Meeting	114
Adjournment	120
Certificate of Reporter	121

P R O C E E D I N G S

10:03 a.m.

CHAIRMAN KEESE: I call this meeting of the Energy Commission to order. Commissioner Pernell, would you lead us in the Pledge, please.

(Thereupon the Pledge of Allegiance was recited in unison.)

CHAIRMAN KEESE: Thank you, everybody. You only get three of us today.

Consent calendar, do I have a motion?

COMMISSIONER GEESMAN: I move.

COMMISSIONER PERNELL: Second.

CHAIRMAN KEESE: Motion, Geesman; second, Pernell.

All in favor?

(Ayes.)

CHAIRMAN KEESE: Opposed? Adopted three to nothing.

Item 2, Midway Sunset Cogeneration Project. Possible approval of a petition to add selective catalytic reduction systems to meet the revised San Joaquin Valley Air Pollution Control District rules.

Good morning.

MS. BRUINS: Good morning,

1 Commissioners. I'm Connie Bruins; I'm the
2 Compliance Project Manager for the Midway Sunset
3 Cogeneration project.

4 We have an amendment before you today.
5 The Midway Sunset Cogeneration project is a 225
6 megawatt project located in Kern County. It's
7 owned by Midway Sunset and was certified in 1987.
8 And they've been operational for about 15 years.

9 The petition before you today, which was
10 submitted on June 11th, is to add some selective
11 catalytic reduction systems per a new Air District
12 rule to lower NOx emissions by half, from 10 to 5
13 ppm. Actually the facility will run closer to 3
14 than 5 ppm, almost at the level of new turbines.

15 Their schedule for construction is that
16 the first two turbines must be completed by April
17 of 2004; the third turbine will be completed by
18 April 2005 or 30 days after the first major
19 overhaul after April of 2004.

20 One other factor that needs to be
21 considered when adding SCR systems is the fact
22 that they require the use of ammonia, and
23 typically produce ammonia slip. That is ammonia
24 remaining in the stack from the ammonia injection
25 process.

1 Ammonia slip can contribute to the
2 formation of PM2.5, which is a component of PM10.

3 Per their regulatory practices the
4 District is limiting ammonia slip to 10 ppm.
5 However, Commission Staff are recommending, and
6 the Midway Sunset Company agrees, that ammonia
7 slip be limited to 5 ppm. These recommendations
8 are based on the SCR of manufacturer's guarantee,
9 the previously licensed projects, and the
10 California Air Resources Board guidelines.

11 In addition to this we feel that the
12 lower ammonia slip limit is particularly important
13 because the San Joaquin Valley Air Pollution
14 Control District is nonattainment for PM10.

15 These modifications will require changes
16 to one condition of certification, that's air
17 quality-18. And will require the addition of
18 conditions AQ-48 through 54.

19 The amendment process is a public
20 process. We published the notice of receipt on
21 June 24. Staff analysis was published on August
22 22nd. We have had no responses to date.

23 In conclusion the Air District approved
24 the modifications on August 18th, although a final
25 certificate of conformity will not be issued until

1 after the 45-day EPA review period.

2 There will be no new or additional
3 unmitigated significant environmental impacts or
4 violation of LORS associated with the changes.
5 The petition meets all the filing criteria of
6 section 1769 of the Public Resources Code. And we
7 recommend approval.

8 In attendance today is Ed Western, the
9 Executive Director of Midway Sunset Cogen; and Ray
10 Smith, the Environmental and Compliance Manager;
11 and air quality technical staff, if you have any
12 questions for any of us.

13 Thank you.

14 CHAIRMAN KEESE: Thank you. I
15 understand this was referred to Committee?

16 COMMISSIONER GEESMAN: Yes, Mr.
17 Chairman, the Siting Committee took this up. This
18 is a good opportunity to improve emissions from a
19 plant in San Joaquin Valley. We've had a
20 beneficial relationship with the District,
21 certainly a civic-minded license holder.

22 So, I would move recommendation of this
23 amendment.

24 CHAIRMAN KEESE: Motion, Commissioner
25 Geesman.

1 COMMISSIONER PERNELL: Second, Mr.
2 Chairman.

3 CHAIRMAN KEESE: Second, Commissioner
4 Pernell. Let me ask at this time, is there
5 anybody who is opposed to this action in the
6 audience?

7 Seeing none, I don't think we need any
8 more testimony. Thank you.

9 All in favor?

10 (Ayes.)

11 CHAIRMAN KEESE: Opposed? Adopted three
12 to nothing. Thank you, everybody. This is a good
13 positive action for the state.

14 Item 3, Pico Power Project. Possible
15 approval of the Presiding Member's Proposed
16 Decision recommending certification for the 147
17 megawatt Pico Power Project in the City of Santa
18 Clara, proposed by Silicon Valley Power.

19 Who is presenting Silicon?

20 MR. FAY: I was waiting for a cue from
21 Commissioner Geesman, --

22 (Laughter.)

23 MR. FAY: -- but I guess that's my cue.

24 CHAIRMAN KEESE: Mr. Fay.

25 MR. FAY: Thank you, Mr. Chairman,

1 Commissioners. The Committee for the Pico Power
2 Project brings before you for your consideration
3 today the Presiding Member's Proposed Decision, or
4 PMPD.

5 The PMPD contains the Committee's
6 determinations regarding the application for
7 certification for the Pico Power Project. It
8 includes the findings and conclusions required by
9 law.

10 The PMPD is based exclusively on the
11 evidentiary record established at the hearing on
12 the application. The Committee has independently
13 evaluated the evidence in the record and presented
14 the reasons supporting its decision.

15 The conditions of certification
16 contained in the proposed decision will insure
17 that the Pico Power Project is designed,
18 constructed and operated in the manner necessary
19 to protect public health and safety, provide
20 needed electrical generation and preserve
21 environmental quality.

22 The project is proposed as a natural gas
23 fired, combined cycle, electrical generating
24 facility rated nominally at a net capacity of 122
25 megawatts, with the ability to peak fire up to 147

1 megawatts.

2 Silicon Valley Power, the electrical
3 department of the City of Santa Clara, proposed to
4 build this plant at a 2.86 acre site located west
5 of the intersection of Lafayette Street and Duane
6 Avenue in the City of Santa Clara. The site is
7 surrounded by heavy and light industrial uses.

8 An existing pipeline currently located
9 within the site will provide tertiary treated
10 recycled wastewater for project cooling. The
11 source of this water is the South Bay Water
12 Recycling Program operated by the San Jose/Santa
13 Clara Pollution Control Plant located in Alviso.

14 The project construction is expected to
15 take approximately 18 to 20 months; and capital
16 cost of the project is expected to be between
17 \$155- and \$165-million.

18 During the siting process the Commission
19 Staff and applicant carried out extensive
20 coordination with numerous local, state and
21 federal agencies. These included the Bay Area Air
22 Quality Management District; the City of Santa
23 Clara; the U.S. Fish and Wildlife Service; the
24 Santa Clara Valley Water District and other
25 regulatory agencies with an interest in the

1 project.

2 Through these efforts the various
3 parties, agencies and community representatives
4 have reached mutual agreement on all aspects of
5 the proposed project, and upon the necessary
6 conditions of certification. I believe this case
7 represents an example of how well our traditional
8 siting process can work.

9 Based on recommendations from the
10 applicant and staff, the Committee has prepared an
11 errata sheet containing minor modifications and
12 corrections to the PMPD. The Committee's
13 recommendation today is that the Commission adopt
14 the Pico Power Project Presiding Member's Proposed
15 Decision and the accompanying errata. A draft
16 adoption order is included in your packet.

17 Any questions?

18 CHAIRMAN KEESE: Thank you, Mr. Fay. Do
19 we have any questions from the Commissioners?

20 COMMISSIONER PERNELL: No questions from
21 me, Mr. Chairman.

22 CHAIRMAN KEESE: Do we have a motion?

23 COMMISSIONER GEESMAN: Mr. Chairman, I
24 would move approval of the PMPD.

25 CHAIRMAN KEESE: Motion, Commissioner

1 Geesman.

2 COMMISSIONER PERNELL: Second, Mr.
3 Chairman.

4 CHAIRMAN KEESE: Second, Commissioner
5 Pernell.

6 Do we have --

7 MR. FAY: And the errata?

8 COMMISSIONER PERNELL: And the errata.

9 CHAIRMAN KEESE: And the errata. Thank
10 you.

11 Is there anyone in the audience or on
12 the phone who is opposed to this project?

13 Seeing none, all in favor?

14 (Ayes.)

15 CHAIRMAN KEESE: Opposed? Adopted three
16 to nothing.

17 MR. GALATI: Scott Galati on behalf of
18 Silicon Valley Power, the applicant. I want to
19 introduce some people today. First we have with
20 us John McLemore from the City of Santa Clara City
21 Council. We have Jennifer Sparacino, the City
22 Manager. We have Jim Pope, the Director of
23 Silicon Valley Power. And John Roukema, the
24 Assistant Director of Silicon Valley Power.

25 We'd like to thank the Committee very

1 much in working very diligently in getting this
2 decision out. We think the decision represents a
3 good project. We think the project is going to
4 fill an incredible need in Silicon Valley Power.

5 Special thanks go out to Dick Ratliff
6 and Matt Trash, I think, who worked very hard in
7 getting us together with staff and getting all
8 things resolved on this case. This case was
9 uncontested.

10 In addition, we'd like to thank Gary Fay
11 for working very hard in getting the Presiding
12 Member's Proposed Decision out.

13 I have to thank two more people and then
14 I'll be done. And that is Andrea Grenier, who was
15 our Project Manager for the AFC submittal; and
16 Doug Davy, who is with Tetra Tech Foster Wheeler,
17 who prepared many of the AFC filings.

18 And last, but not least, we'd like to
19 thank the compliance unit who has worked extremely
20 well with us. In fact, as of last Friday, all our
21 preconstruction approvals are submitted and we're
22 ready to go as soon as you act.

23 So, we thank you very much. I'd also
24 introduce the person on my left who led this
25 project, the General Manager Les Ward.

1 MR. WARD: Thank you. I can honestly
2 say I'm very happy to be here today. This is my
3 sixth different state that I have participated in
4 permitting a combined cycle power plant. Most of
5 those have been on the east coast.

6 And I'd like to say that when I came
7 west many of my colleagues thought I was, "Les,
8 why would you do that? To California?"

9 The permitting process in California has
10 been, if not delightful, it certainly has been
11 enjoyable. I'd like to comment that the
12 accessibility to staff to work reasonable
13 solutions to problems has absolutely been a
14 tremendous benefit to the end result of a power
15 plant that's the best for the City of Santa Clara.

16 So, a sincere thank you to all of you,
17 and good luck to those behind us. Thank you.

18 CHAIRMAN KEESE: Thank you very much.
19 Commissioner Geesman.

20 COMMISSIONER PERNELL: Thank you.

21 COMMISSIONER GEESMAN: Mr. Chairman, let
22 me say that this is a particularly important
23 project for the State of California. You know,
24 most of my adult life I've heard how difficult it
25 is to find sites for power plants in California.

1 This applicant has established that
2 there are, indeed, urban sites located very close
3 to load, which can, indeed, satisfy California's
4 rigorous environmental standards.

5 I'd also commend the City for the
6 extraordinary job that it did in resolving public
7 issues of concern before it ever got to the Energy
8 Commission siting process. We encountered no
9 public friction whatsoever. And I want to say
10 that's quite contrary to the stereotype that one
11 would associate both with the siting process, and
12 in particular the siting of an urban project.

13 Most importantly of all, Mr. Chairman,
14 this project is going to proceed immediately to
15 construction and will be available to the citizens
16 and customers of Santa Clara by the summer of
17 2005.

18 CHAIRMAN KEESE: Thank you, Commissioner
19 Geesman. I recognize that generally speaking many
20 of the projects that we've approved in the past
21 are on hold and not going forward. We see very
22 little construction in the years '05 and '06. And
23 I'm delighted to see we have one that will start
24 construction in a part of the grid. I'm sure it
25 will benefit Santa Clara, but it will also benefit

1 the whole grid.

2 Thank you, gentlemen.

3 MR. GALATI: You're welcome; thank you.

4 COMMISSIONER PERNELL: Thank you.

5 Item 4, SMUD Cosumnes Power Plant
6 Project. Possible consideration and approval of
7 the SMUD Cosumnes Power Plant 1 Presiding Member's
8 Proposed Decision recommending granting
9 certification with conditions.

10 COMMISSIONER PERNELL: Mr. Chairman.

11 CHAIRMAN KEESE: Commissioner Pernell.

12 COMMISSIONER PERNELL: Mr. Chairman, the
13 Committee held a series of hearings out in the
14 community on this project. The Committee
15 consisting of myself and Commissioner Rosenfeld.

16 And at this time I would ask our Hearing
17 Officer, Mr. Shean, to before he sits down, to
18 come up and brief the Board and the audience on
19 the project.

20 MR. SHEAN: Thank you, Commission. SMUD
21 has proposed a 1000 megawatt two-phase -- 500
22 megawatt per phase project adjacent to its Rancho
23 Seco Power Plant in the southeastern Sacramento
24 County.

25 As part of the project it also proposes

1 a 26-mile, 24-inch natural gas pipeline
2 essentially from the Carson Ice Gen project, which
3 we had certified some time ago, down the railroad
4 right-of-way, and then easterly through Sacramento
5 County to the power plant project.

6 If the second phase is applied for by
7 SMUD, and this is a matter that is being left
8 open, although the substantial amount of the
9 environmental analysis includes both phase 1 and
10 phase 2, then there are two compressor stations
11 which will be necessary, one in Winters and one
12 near the Ice Gen project, in order to provide
13 sufficient gas.

14 The Committee conducted two sets of
15 evidentiary hearings, one in March and another one
16 in May. And as a result of that, accumulated a
17 record which resulted in the Presiding Member's
18 Proposed Decision issued in early August which
19 recommends approval of the project with numerous
20 conditions.

21 We held a Committee Conference on August
22 28th to take comments on the PMPD, as well as to
23 take public comments from property owners who
24 reside on agricultural, or own agricultural
25 property along the pipeline route east of Highway

1 99.

2 As a result of that the Committee has
3 formulated an errata to the PMPD, which I believe
4 you have, which then results in the final
5 recommendation of the Committee, the PMPD and the
6 errata combined, for approval of the project with
7 the conditions that are enumerated.

8 We do have not only SMUD here, the
9 staff, but several members of the public. We have
10 active participation by two intervenors, Kathy
11 Peasha and Dr. Roskey. We have also members of
12 the public who are those property owners along the
13 pipeline route. I'm quite sure each of them would
14 like to speak.

15 Let me just indicate we did have some
16 issues in this case, not only between staff and
17 SMUD, but between the intervenors and SMUD, and
18 the property owners and SMUD. We have not been
19 able to resolve those to the satisfaction of all
20 parties. We think we have nonetheless deliberated
21 the best result in the public interest. And where
22 we have been able to, have tried to mitigate to
23 the extent feasible, any of the impacts from the
24 perspective of each party to the extent possible.

25 We do believe, and the Committee has

1 found, that there are no significant environmental
2 or community impacts that cannot be mitigated.
3 And they have been mitigated to the extent
4 feasible.

5 Thank you.

6 COMMISSIONER PERNELL: Thank you, Mr.
7 Shean.

8 CHAIRMAN KEESE: I have an indication of
9 ten people who wish to speak on this. Why don't
10 we deal with the general issues.

11 Mr. Shetler, SMUD.

12 MR. SHETLER: Thank you, Mr. Chairman,
13 Members of the Commission. My name is Jim
14 Shetler. I'm SMUD's Assistant General Manager for
15 Energy Supply. With me here today is Steve Cohn
16 from our General Counsel's Office. I'd also like
17 to take a moment and introduce two of our elected
18 officials, Susan Patterson who represents Ward 2
19 in SMUD, and is our Board President, in the
20 audience. And also Genevieve Shiroma, who
21 represents Ward 4 for SMUD.

22 Also with me today is our Project
23 Director, Colin Taylor, and our Project Licensing
24 Coordinator, Kevin Hudson.

25 First of all I'd like to thank the

1 Committee for its consideration and issuance of
2 the PMPD. We would like to state that SMUD is in
3 support of the conditions and the results of the
4 recommendation that the Committee has made,
5 including the errata sheet that was issued.

6 We also want to thank the intervenors
7 who were involved in the process. They have
8 brought a lot of issues forward. We recognize
9 that we have not necessarily come to agreement on
10 all of those issues, and we know there are still
11 some that we need to resolve. Particularly with
12 landowner issues on the routing of the pipeline.

13 I made a commitment to the Committee a
14 couple weeks ago, and I'll make that commitment
15 here today to the Commission, that SMUD intends to
16 work in good faith to work with the parties
17 involved to try to find a solution that meets both
18 parties' needs and is satisfactory to both
19 parties.

20 As the Commission, I'm sure, is aware,
21 routing of facilities, be they power lines or gas
22 pipelines is a controversial issue. SMUD is
23 familiar with that, and we intend to do our best
24 efforts to try to resolve those issues.

25 We would definitely support moving

1 forward with the decision today. This power plant
2 is key to SMUD's needs to meet our growing demand.
3 It also is key to meet voltage support
4 requirements for the Central Valley. And our goal
5 is to have this power plant online to meet part of
6 the summer of 2005 needs. And we would like to
7 very definitely take advantage of the construction
8 season, what's left of it this year.

9 I'm available for any questions that the
10 Commission might have.

11 CHAIRMAN KEESE: Thank you. One generic
12 question. I'm sure the Committee is aware of it.
13 We heard phase one and potential phase two. Is
14 this pipeline that we're talking about geared to
15 handle both?

16 MR. SHETLER: Yes, sir, it is. As was
17 mentioned earlier, we would have to add
18 compression in order to supply sufficient gas to
19 the second phase. But the pipeline, itself, is
20 sized to handle both.

21 CHAIRMAN KEESE: Thank you. I think
22 the -- were you --

23 MR. SHETLER: I'm finished, sir.

24 CHAIRMAN KEESE: You're completed. Why
25 don't we take Kathy Peasha -- we'll take both

1 intervenors at this time. Kathy Peasha.

2 MS. PEASHA: Yeah, I'm here, thank you.
3 Just give me a second to get my cards in order,
4 please.

5 Good morning, Commissioners, local
6 residents and property owners of Herald. I'm glad
7 some of the public could actually make it at this
8 inconvenient day and time. I know what an
9 inconvenience it is for me today.

10 I was going to bring in a dolly with all
11 of the paperwork that I have accumulated in the
12 past 18 months or so since I started my
13 intervention, but I believe that presentation was
14 once done in the past.

15 The response that Mr. Cohn got that was
16 interesting, one of the Presiding Members said
17 something to the fact, it isn't the amount of data
18 response that is important, it's the right data
19 response and factual information that we're
20 looking for.

21 I've honestly read about 90 percent of
22 all the documents that I have accumulated. With
23 very little knowledge of the acronyms that were
24 used, the legal descriptions, I have set forth to
25 make myself aware of these uses so that I could

1 better understand the whole idea of a power plant
2 of this magnitude and complexity.

3 I am that much more knowledgeable and
4 applied myself as much as I could in these
5 proceedings as possible. I am that much more
6 confident that the decisions made by many of you
7 sitting here are not the best decisions and may
8 not, in fact, be thoroughly good for this
9 community and the ratepayers of SMUD.

10 I look around this room and I'm appalled
11 with the outcome that brings me here today. I
12 hate to say it, but I'm not extremely impressed
13 with the obvious degrees that many of you possess
14 after the poor and methodolical decision you all
15 seem to concur.

16 I have not only gained abundant
17 information from many of you, but I took it upon
18 myself to go beyond these doors and on my own time
19 I have talked and listened to many experts in all
20 the realms of this project. And I was diligent
21 about keeping an open mind in the facts outside
22 the opinions of many that I have met. And many of
23 the field and aspects -- many of the field
24 engineers and their aspects of this, and other
25 similar related jobs and other projects.

1 And those knowledgeable members, they
2 seem to concur with me. In my comments on the
3 PMPD I have compared the proposed site and
4 alternative sites, namely the Carson Ice
5 Generation site. Of all the criteria which the
6 PMPD evaluated there are significantly fewer
7 impacts at the Carson Ice Generation plant.

8 I went one step further and included the
9 safety issue, which should be, quite frankly, be
10 at the top of the list.

11 Staff comments on the alternatives
12 recommends that the Committee include in its
13 discussion a conclusion about whether any of the
14 alternatives would feasibly obtain most of the
15 basic objectives.

16 Staff also brought to my attention the
17 plans for the new project switchyard, which I was
18 not fully aware of. This is ultimately
19 inconsistent with the project description provided
20 in the AFC and its supplements. The substitution
21 of compliance manager approved equivalent
22 equipment substation would be the configuration is
23 acceptable. But I don't agree with that.

24 The CPP fact sheet provided by SMUD in
25 the beginning of the application for certification

1 describes project location on SMUD's property
2 which will allow for use of existing transmission
3 lines, the substation and water delivery system.

4 CPP will -- construction will require 30
5 acres of annual grassland to be leveled and
6 elevated for the CPP footprint and the electrical
7 switchyard. New transmission lines also needed.
8 Water, which they say the second phase would come
9 from reclaimed water from most probable the Galt
10 Wastewater Treatment Plant, if, in fact, they do
11 expand. And that the water that SMUD is in
12 contract with with the Folsom South Canal, their
13 contract expires in 2012, which would -- there
14 would be a need for them to reapply for that use
15 of that water.

16 The cost of reclaimed water from Galt
17 Wastewater Treatment Plant would range somewhere
18 between \$13.4 to \$22 million. That would also
19 need a new water line to this plant. At the same
20 time Carson Ice Generation Station puts out 5
21 million gallons a day at this time already, which
22 is the prospected use for both phases of power
23 plant that they are proposing.

24 Visual impacts is another speculative
25 problem with this whole PMPD. The CEQA guidelines

1 state the cumulative impacts and results from
2 individually minor, but collectively significant,
3 projects place overall a period of time would
4 greatly -- it also has to be taken into
5 consideration for the visual impacts.

6 In some of the errata from the staff
7 they are concluding that there wouldn't be a
8 significant impact of visual site because Rancho
9 Seco already exists. One of SMUD's projects that
10 already exists, that has been shut down for almost
11 14 years, or already exists and does affect the
12 visual impacts because it is -- excuse me -- it is
13 collectively with the towers that they will put
14 out on this new power plant.

15 Once again you cannot mitigate safety.
16 SMUD has proposed a fire protection errata which
17 still puts us in the middle of a very remote area
18 where we only have a volunteer fire department.
19 We do not have a hazmat and truck and trailer; we
20 do not have a ladder that will go to the top of
21 the towers that were proposed. Or the gas fired
22 towers.

23 In my letter regrading the comments of
24 the acceptance of the PMPD I do need to make one
25 change. This was a typo. But on the matter of

1 safety, while the PMPD considered the preceding
2 topics when evaluating the feasibility of
3 alternative sites, the PMPD does not take into
4 consideration of the area of safety.

5 The Carson Ice Generation site is about
6 1.5 miles from a fire station which will function
7 as the first response on a hazmat event. While it
8 is clear the volunteer fire department near the
9 proposed CPPC site is inadequately equipped, the
10 Carson Ice has a fire protection hazmat facility
11 within an estimated time of about two minutes. At
12 the CPP site it is estimated at 30. Oddly enough,
13 the same fire department will respond to either
14 site.

15 When comparing the improving costs of
16 the Carson site to the CPP site, SMUD states
17 because it is located in a 100-year flood plane
18 that that would be a significant problem.
19 Although the site would require the import of 40-
20 to 80,000 cubic yards of fill for flood
21 protection.

22 The cost per cubic yard of fill is
23 approximately \$12 a cubic yard. At the highest
24 estimate of fill this would be about a million
25 dollars. On the other hand, the cost of the

1 natural gas pipeline is estimated to be about 20
2 million.

3 The pipeline has other drawbacks.
4 Weather permitting work, escalated mitigation
5 factors which are still not resolved, and unknown
6 increases of cost due to the drawbacks I just went
7 over.

8 While the cost of the facilities are
9 borne by the municipality, they are passed on to
10 the consumer through rates. The ratepayers of
11 SMUD prefer to have low rates and therefore SMUD
12 should use the best feasible site for this power
13 plant.

14 I believe a valued engineering clause
15 should also be adopted in the contract to build
16 this power plant. This would benefit the
17 ratepayers which I believe are not clearly aware
18 of what SMUD is spending on the proposed CPP.

19 At the second evidentiary hearings at
20 the prehearing conference we had several items
21 that were not -- that were still under mitigation.
22 One of them was the land use, which was one of my
23 topics. The other was water resources.

24 And the day after the prehearing
25 conference the Committee conducted or sent a

1 letter to me ordering me not to talk about some of
2 the construction or some of the mitigations
3 between landowners that they had already processed
4 and completed. For one of the nearby residents
5 they put in a new well and were going to put a new
6 trailer out there, because the trailer that
7 existed within the noise level that -- it was
8 impacted by the noise range from this CPP project.

9 Without the permits of everything they
10 went ahead and did this. They also graded roads
11 for earned credits for the air quality. And the
12 other stipulation I was not allowed to talk about
13 was the fact that the pipeline that -- the water
14 pipeline that serves Rancho Seco at this time
15 busted. And 180 feet of that pipeline had to be
16 replaced.

17 Now considering the age of that pipeline
18 I cannot believe that SMUD did not take the
19 initiative to test that before turning up the
20 volume of water that went through this pipe.

21 Following the proceedings that Sunday
22 they had put construction workers and pipefitters
23 in the downpour of rain to fix this pipeline. At
24 any cost is what one of the pipefitters told me.
25 That is not any way to spend the ratepayers money.

1 The overall impact of the 26-mile
2 gasline is astronomical to a lot of environmental
3 impacts, and I believe it's not needed because the
4 site that would be the best site for this power
5 plant is right where the pipeline would begin, and
6 that is at the Carson Ice Generation Plant.

7 The amount that they would spend to
8 bring the levee or bring the area up out of the
9 100-year flood level is a drop in the bucket
10 compared to what they're going to spend on this
11 pipeline for gas.

12 The timeline that they're worried about,
13 about getting in and getting things done is SMUD's
14 own fault, because they have chosen the wrong
15 project site. Much of this could have been
16 mitigated in this area. There is 2500 acres of
17 buffer land out there where the south -- the
18 Sacramento Wastewater Treatment Plant can furnish
19 reclaimed water at 5 million gallons per day which
20 would suffice for the first and second phase of
21 this power project.

22 The 100-year flood plane is
23 insignificant in another way, is the fact that
24 they have a wastewater treatment plant there. It
25 is much easier for a power plant to shut down, if,

1 in fact, the floods are relevant, than it is for a
2 wastewater treatment plant to have people quit
3 flushing their toilets. And if that was such a
4 big deal, the wastewater treatment plant would not
5 be in that vicinity.

6 The proposed power plant is needed for
7 the abundant growth, much of it in the Elk Grove
8 area. They have adequate fire protection at that
9 location, which is near -- which is in the area of
10 Laguna/Elk Grove.

11 The reason I moved to the remote
12 country, because I chose to, because -- but I pay
13 because the country property values that come
14 along with it is an indication why should I have
15 to live next to this. I cannot believe SMUD has
16 tried to eliminate the perfect site for this
17 plant.

18 CHAIRMAN KEESE: Could you wrap this up;
19 we have about six or seven more witnesses to go
20 here.

21 MS. PEASHA: Certainly. I just want to
22 say I hope the Commission takes all of this into
23 consideration and makes the right decision on the
24 disapproval of the site for the CPP.

25 CHAIRMAN KEESE: Thank you, Ms. Peasha.

1 MS. PEASHA: Thank you.

2 COMMISSIONER PERNELL: Mr. Chairman, I
3 just have one question for Ms. Peasha.

4 MS. PEASHA: Yes.

5 COMMISSIONER PERNELL: Ms. Peasha, thank
6 you for being here. You've participated
7 throughout the hearings on this project. You
8 mentioned that the Committee sent you a letter
9 telling you not to talk about something? Do you
10 have a copy of that?

11 MS. PEASHA: Yes, sir, I do.

12 COMMISSIONER PERNELL: I would ask Mr.
13 Shean to take a look and explain to the Committee
14 if, in fact, there is such a letter that came from
15 the Committee.

16 MR. SHEAN: I anticipated that this is
17 in the briefing order or in the hearing order that
18 followed the prehearing conference. And I think
19 what we indicated is with respect to the moving of
20 the trailer, which is designated R1 in the noise
21 section, and which, because it was in very close
22 proximity to the proposed facility, and would have
23 been a receptor that had unacceptable high
24 potential noise impact, SMUD had agreed throughout
25 the discussions and formulation of the FSA with

1 the staff and then ultimately the proceedings with
2 the Committee, that they would move it.

3 And, indeed, prior to the end of the
4 proceedings they went ahead, and with the
5 agreement of a private landowner, did move it.
6 And did relocate a water well.

7 And the Committee's view of this was
8 that notwithstanding the fact that that was
9 something that we anticipated be done as a
10 condition of certification, it fundamentally came
11 down to being a private arrangement between SMUD
12 and the owner of the property. And that they had
13 the ability and the right to complete this
14 relocation without the oversight of the
15 Commission.

16 And therefore the matter was no longer
17 relevant since it had been moved out of the
18 offensive noise range of the facility. And
19 therefore, because it wasn't relevant, was not
20 going to be a matter to be heard in the
21 proceedings.

22 COMMISSIONER PERNELL: All right, so
23 that was a private arrangement between the
24 landowner and the applicant?

25 MR. SHEAN: That's correct.

1 COMMISSIONER PERNELL: And so there was
2 no letter sent demanding that Ms. Peasha not talk
3 about it?

4 MR. SHEAN: I think all it indicated was
5 that we considered it not to be relevant.

6 It indicates, I'm quoting here now from
7 the hearing order dated April 30th, "The Committee
8 found the proposed testimony about SMUD's private
9 contractual arrangement with a nearby owner/
10 resident to move a house trailer beyond the
11 potentially impacting noise range of the project
12 is not relevant to the proceedings."

13 COMMISSIONER PERNELL: All right, thank
14 you. Thank you, Mr. Chairman. I wanted to make
15 sure that the record is clear.

16 MS. PEASHA: I have one other thing I
17 have to bring up.

18 CHAIRMAN KEESE: Very briefly.

19 MS. PEASHA: Very briefly. The
20 Executive Summary for the PMPD is dated August
21 6th, scratched out with the 11th, which was the
22 original date on this paper.

23 I kind of questioned maybe that was just
24 a typo error. But when I received the notice of
25 the availability of the proposed decision, it says

1 the project -- the Members Presiding Decision had
2 been released. And the proposed decision
3 recommends granting the application.

4 On the very footnotes of the letterheads
5 and the letters that come from California Energy
6 Commission it stipulates the date that these
7 comments or whatever fact they might be about was
8 8/06/03.

9 As you turn it over the date that is
10 handwritten on this notice is 8/06/03. But on the
11 bottom, once again it states a different date,
12 which is 8/11/03.

13 In other words, I believe that the
14 Commission, the Presiding Members changed the
15 dates on this for a significant reason for SMUD.
16 And I protest the fact that it was changed to
17 August 6th when I believe that the Commissioners
18 and the Presiding Members actually signed this on
19 August 11th, due to the fact that I have one of
20 their documents showing two different dates.

21 CHAIRMAN KEESE: Mr. Shean, first of
22 all, is the date relevant? And second of all --

23 MR. SHEAN: The date is relevant in that
24 it is the start of the -- the commencement of the
25 public comment period, and so it is relevant.

1 And let me just indicate that what
2 happened is that we had been proceeding on a
3 schedule for the preparation of the Presiding
4 Member's Proposed Decision within the Committee.
5 We had anticipated a release date of the 11th of
6 August, and because the review that went on among
7 the Members of the Committee and essentially the
8 logistics of typing and retyping went faster than
9 we had anticipated. The Committee Members had
10 signed the document called Executive Summary,
11 which is page 3 of the PMPD.

12 And it was simply a matter of the
13 unavailability at that point on the 6th of the
14 Committee Members to resign the document that
15 after a telephone conversation we merely crossed
16 out the 11th, put in the 6th, which was the actual
17 date that the PMPD was produced, docketed and
18 mailed to all the parties.

19 So it is correctly the date upon which
20 the 30-day period for the public comment period
21 commenced. And that is simply --

22 CHAIRMAN KEESE: Thank you.

23 MS. PEASHA: Mr. Shean, would you look
24 at this --

25 CHAIRMAN KEESE: I hope that --

1 MR. SHEAN: Oh, okay.

2 MS. PEASHA: Do you understand the fact
3 that this is dated the 6th. This is the same
4 letter, and on the back this is dated the 11th.
5 And this is the only notice I've ever received
6 from the California Energy Commission that the
7 date has not been in bold letters, and not
8 handwritten in.

9 MR. SHEAN: Okay, and the same
10 explanation here. What Ms. Peasha is talking
11 about is the footer on the bottom of the page for
12 the purposes of the electronic filing and service
13 protocols that we have operating in this case, we
14 have basically an identifier for the case, the
15 date, who is the authoring submitter of a document
16 and generally the title of the document.

17 And the same thing applies here. We had
18 a situation where these documents had been signed
19 in advance, and the Commissioners were unable to
20 resign them. And that's all that means.

21 MS. PEASHA: Then why would they change
22 one side and not the other, Mr. Shean?

23 CHAIRMAN KEESE: Thank you, --

24 MR. SHEAN: Okay.

25 CHAIRMAN KEESE: -- Mr. Shean. It would

1 be good if we could avoid --

2 MS. PEASHA: Well, I, you know, I --

3 CHAIRMAN KEESE: -- similar activities
4 in the future.

5 MS. PEASHA: -- I just question the fact
6 what date it was originally signed --

7 CHAIRMAN KEESE: Thank you. Well, we've
8 heard. Thank you, Ms. Peasha. I would ask staff
9 to try to avoid confusion in the future on issues
10 like this. Thank you.

11 Can we have Mike Roskey, is it? Please.

12 DR. ROSKEY: It's Mike Roskey.

13 CHAIRMAN KEESE: Roskey, thank you.

14 DR. ROSKEY: Thank you very much for the
15 opportunity to speak today. My name's Mike
16 Roskey; I live approximately six miles from the
17 proposed site. I've been an intervenor for, I
18 don't know, probably half of the time that Kathy
19 has been, if that much.

20 I was aware at the beginning of this
21 project that it was proposed, but just really
22 didn't have time. And, as it became obvious that
23 they were actually going to go through with this
24 thing, I did try and make more time later, you
25 know, to become an intervenor. And fortunately I

1 was able to squeak through the deadline and become
2 one.

3 As a resident in the area and someone
4 who has read quite a bit of the record, I am
5 opposed to this project. I think that there's a
6 number of things that are drawbacks to it, aside
7 from the points that Kathy Peasha has made
8 concerning siting.

9 My focus has been on air quality because
10 I think that that's probably the impact that's
11 going to be most significant of this site, of this
12 proposed project. I have focused on that.

13 There's a number of things that I think
14 are wrong with this facility, especially the
15 conditions that have been proposed by the Energy
16 Commission Committee.

17 Number one, and most significant, I
18 think, is the allowing the 10 ppm ammonia slip.
19 Staff originally recommended 5 ppm be the limit.
20 And I believe that that is the correct limit to
21 impose on this project. And I don't think that
22 there is any justification for relaxing it to 10
23 ppm, other than to save SMUD some money. That
24 obviously is consideration for them.

25 But I think what we ought to be

1 concerned with as public servants and as members
2 of the community is the public health. And I
3 think it's already been established by the staff
4 analysis that the air quality in this region does
5 surpass federal and state standards, specifically
6 for particulates and for other things. And that
7 allowing a 10 ppm slip is going to contribute to
8 that violation, that exceedance. And I believe
9 significantly, okay?

10 Significantly to the extent that I think
11 it will damage the people in the area, it will
12 injure the people in the area. There's a, not
13 sure how to proceed -- I tried to do an analysis
14 of my own and present it to the Committee of the
15 effects that might result from particulate
16 emissions from this site on residents in the area.

17 And I tried also to provide an estimate
18 of population in the area, and an estimate of
19 population growth within the next 20 years. And
20 because those things were missing really from the
21 report of the staff. And I think on the
22 presumption that the modeling, I don't know,
23 analysis which is generally used or which they, I
24 guess is generally used because that's what they
25 felt was adequate.

1 Came up with the conclusion that
2 actually there would be no impact whatsoever
3 practically. I mean in other words that they felt
4 it would be insignificant.

5 Well, you know, I don't, you know,
6 computer modeling of emissions based on, I'm sure
7 on engineering factors and analysis of environment
8 and when the patterns and all that sort of thing,
9 all that, you know, does give you some, you know,
10 credible, semi-credible results.

11 The only problem is that this modeling
12 is done in isolation. It does not consider
13 population in the area. It does not consider
14 specifically population growth, population change.
15 And aside from that, what this population is going
16 to contribute to the ambient, you know,
17 atmosphere, okay?

18 Just recently we had The Sacramento Bee
19 issue come out with a story concerning the Los
20 Angeles, the air pollution in the Los Angeles
21 area, saying that actually the contributions to
22 the atmosphere, if we can call them that, on the
23 population, the damage to the atmosphere from the,
24 you know, activities of the population exceed
25 actually the contributions from, you know, motor

1 vehicles, okay?

2 I mean these things, it seems to me,
3 ought to be considered in any kind of analysis of
4 what the damage to the, you know, the health of
5 the people in the area would be. And they are,
6 you know, missing from any analysis that I saw.

7 There are no projections of population
8 that I could find. And the two analyses that they
9 did produce of population came up with different
10 results, okay, in the staff analysis, okay. And
11 they differed by 1000 people, which within a six-
12 mile radius that's significant, okay.

13 They dismissed my attempts to come up
14 with some, you know, some estimate of what the
15 damage would be to the people in the area as being
16 based on maximum, you know, maximum projections of
17 emissions under the worst conditions.

18 Well, fine, except what happened to the
19 population growth? What happened to the
20 contributions of the population to the atmosphere
21 in the area? What happened to actually, you know,
22 measuring the impacts on people?

23 What we have here is a legal
24 confabulation, and I mean that literally, fabula.
25 It's a story. It's a fiction. We have people who

1 have -- what the record has is in terms of actual
2 evidence concerning impacts on, you know, people
3 is lacking is, you know, fundamentally deficient.

4 And we have on top of that the legal
5 fiction of the credits, the -- I forget the name
6 of them -- the emissions credits. These emission
7 credits which they claim as evidence that actually
8 the impacts to the atmosphere of the area will not
9 be significant are from, many of them are from 10
10 to 20 years old, from plants that closed 10 to 20
11 years ago.

12 I mean the effects are gone of these,
13 you know, emissions. They're not even, you know,
14 credible in terms of their impact at present,
15 okay. So what we have is a legal fiction
16 compounded with a deficient analysis.

17 And I think that we ought to consider
18 not just the impacts -- finally, this is my last
19 point -- we should not just consider the impacts,
20 the respiratory distress, the elevated cancer
21 rates, et cetera, on the people in the immediate
22 area. We ought to also consider energy policy as
23 a whole.

24 We're facing environmental disaster
25 coming in the next few years. You know, I don't

1 want to get into hyperbole here, or hypotheticals;
2 but all the credible scientific analysis of the
3 environment and the worst thing in the environment
4 on our globe, because of the use of fossil fuels,
5 points in that direction. That there is a
6 disaster impending.

7 SMUD apparently, and all of our energy
8 companies in this state, apparently ignore this.
9 They don't think this is significant, and they are
10 willing to proceed with fossil fuel burning. I
11 guess because they don't see any other
12 alternative, though there is an alternative. And
13 it just means that we have to, you know, we have
14 to provide the funding, we have to find the
15 funding, we have to do what is right.

16 And so I would like to ask the
17 Commission to reject this proposed plant, and to
18 direct SMUD to come up with something that is
19 environmentally defensible.

20 Thank you.

21 CHAIRMAN KEESE: Thank you very much.

22 COMMISSIONER PERNELL: Thank you.

23 CHAIRMAN KEESE: Mr. Jerry Livaich.

24 MR. LIVAICH: Yes, sir, thank you very
25 much. My name is Gary Livaich; I'm a lawyer with

1 Desmond, Nolan, Livaich and Cunningham. And I'm
2 here this morning representing a few landowners,
3 the Pellandinis and Mr. Alex DeLu, who are present
4 in the audience.

5 I will keep my comments relatively short
6 for you, but there are a couple of points that I
7 want to make for the record.

8 First of all, I provided submission to
9 the Commission yesterday outlining briefly the
10 objections that we have to this project. And they
11 aren't objections so much to the project, itself,
12 but to the 26-mile pipeline that is an integral
13 part of the project.

14 It was submitted before the errata was
15 delivered to me, and I have looked at the errata.
16 My clients still have objections to the pipeline
17 portion of the project because even with the
18 errata at least the discretion with SMUD as to
19 where to actually locate or align the pipeline.

20 The Constitution in California provides
21 protection to citizens against governmental
22 excesses. And the California eminent domain law
23 requires that public projects be designed to
24 provide the greatest public good with the least
25 private injury.

1 In addition, the eminent domain law in
2 California provides that the property to be taken
3 by the public entity be necessary for the project.
4 And those were the two big concerns that we have
5 and are the basis for our complaints today.

6 Number one, the pipeline, as it relates
7 to or is adjacent to the Pellandini and the DeLu
8 property, are located well within those property
9 boundaries. It requires, as proposed, 35-foot
10 easement taken from these private landowners.

11 All along there has been no reasonable
12 explanation given as to why this pipeline cannot
13 be located within the public right-of-way that is
14 adjacent to these properties, or along the
15 roadside ditches that may or may not be within the
16 public right-of-way.

17 We have submitted, as part of our
18 package, the agreement of cooperation or the
19 letter that indicates cooperation by Don Nottoli,
20 the Supervisor for this District, who urges the
21 pipeline to be located within the public right-of-
22 way that would eliminate the taking of the private
23 property rights.

24 In addition, as it relates to the
25 Pellandini property, I submitted along with my

1 letter of objection a photograph that is an aerial
2 photograph that shows the property immediately to
3 the north of Arno Road. There are no land uses
4 there at all.

5 I've reviewed the, I think you refer to
6 it as the PMPD. And particularly whether there
7 has been any environmentally sensitive areas
8 identified across the street or north of the
9 Pellandini property, and there appear to be none.

10 There's no justification as to why that
11 pipeline has to be on the Pellandini property, or
12 even on the south side of Arno Road.

13 CHAIRMAN KEESE: Let me ask you a
14 question because we're coming -- I didn't think we
15 were into pipeline yet, but this is fine.

16 We heard from SMUD that they recognize
17 this is an issue, and they intend to keep working
18 in good faith to negotiate it. Have you had
19 negotiations previously?

20 MR. LIVACH: We have had -- my clients
21 have had discussions directly with SMUD. Mr. Cohn
22 has sent me an email, left me a phone message.
23 Because between the Herald meeting that we had
24 within the last couple of weeks, and today,
25 because of the press of business of my calendar

1 I've not been able to get together with Mr. Cohn
2 on that.

3 And I do appreciate the recitation, or
4 the representation from SMUD, that it will
5 continue to negotiate with the landowners. My
6 fear is, like I've heard in the past when we're
7 dealing with design of public facilities, is well,
8 it's just too expensive so we're going to have to
9 keep it there.

10 I'm hopeful that we can deal with SMUD
11 and we can relocate, or they would agree to
12 relocate the pipeline off of the Pellandini
13 property and off of the DeLu property interests.

14 CHAIRMAN KEESE: And in your opinion
15 that's not terribly expensive?

16 MR. LIVACH: I don't have an opinion.
17 I'm not a contractor nor --

18 CHAIRMAN KEESE: Okay.

19 MR. LIVACH: -- have my clients spent
20 the time or money to go out and get competitive
21 bids. It may be more expensive from a
22 construction standpoint, when you factor in the
23 costs of acquiring the private property interests,
24 you factor in the cost of the eminent domain
25 action, you factor in the cost of the

1 inconvenience and the disruption to the property
2 owners' businesses, it may not be.

3 CHAIRMAN KEESE: In other words, you've
4 laid out that there's probably a reason for both
5 sides to be interested in negotiating this issue?

6 MR. LIVACH: Absolutely true. One
7 other point that has not been answered to my
8 satisfaction, and that deals with the issue of
9 whether or not this private property is necessary
10 for the pipeline, is the fact that the easement
11 that's proposed in this project, as proposed, is a
12 35-foot easement to carry a two-foot pipe.

13 For the life of me I can't understand
14 why 35 feet is necessary to carry a two-foot pipe.
15 We were given a drawing, a schematic, and it is a
16 common schematic given showing cranes with
17 excavation and laying the pipe. And it shows
18 different widths that are needed for this
19 construction period.

20 But if it's needed for the construction
21 period that can be accomplished by a less onerous
22 method, and that's by use of temporary
23 construction easements. Easements that are used
24 during the construction period and then when the
25 construction is over the property is back in fee

1 ownership to the private property owners.

2 SMUD gets what it needs, five feet, ten
3 feet. But I don't understand why a 35-foot
4 easement is necessary for a two-foot pipe.

5 CHAIRMAN KEESE: And you'd also propose
6 that they get the right to come back in and repair
7 and replace?

8 MR. LIVACH: Well, if it's next to the
9 public right-of-way there's no problem. If it can
10 be shown why the pipeline is nine feet off of the
11 property line, if that is for a maintenance road,
12 great. Do we need a 33-foot maintenance road?

13 CHAIRMAN KEESE: I hear you.

14 MR. LIVACH: Okay, as I said before,
15 the record, in my view, is deficient. It does not
16 give facts sufficient to justify a 35-foot
17 easement to show that all of the property is
18 necessary.

19 And with that, I would submit it. And I
20 know that there are other folks behind me.

21 CHAIRMAN KEESE: Thank you.

22 MR. LIVACH: Thank you for your time.

23 CHAIRMAN KEESE: I did have a question
24 for James, Sandra and Chrissy. Were you each
25 going to speak, or do you have a representative,

1 or are we talking about three different pieces of
2 property, or what do we have here?

3 MS. PELLANDINI: We're all talking about
4 the property that Gary was just talking about.

5 CHAIRMAN KEESE: Are you satisfied with
6 his presentation of the issue, or did you want to
7 say something about it?

8 MR. PELLANDINI: I was --

9 MS. PELLANDINI: I wanted --

10 CHAIRMAN KEESE: Sure. However you'd
11 like to handle it here.

12 MR. PELLANDINI: I'm James Pellandini.
13 I met this gentleman and this gentleman at a
14 Herald meeting. I got to take my hat off to them.
15 My daughter's here; she'll be fifth generation.
16 Our dairy is real close to the road.

17 With SMUD at one time we were one of the
18 biggest, as far as pumps in that area, we keep
19 getting shoved and shoved and shoved. I had to be
20 up very early this morning to be able to feed cows
21 to get here, me and my dad. I know I'm talking
22 fast.

23 99.9 percent of the time we're on that
24 ranch. We take it very serious. Mr. Shetler,
25 about eminent domain, the first five minutes we

1 ever had our first meeting at one of their deals
2 we got eminent domain thrown at us in our house,
3 in our workclothes.

4 Last week Mr. DeLu was notified, when
5 they're always saying they're supposed to work
6 with us, and I'm looking right here, very honest,
7 always working with us, you want to get this thing
8 approved. And once it gets approved we're
9 downwind. We're done.

10 Mr. DeLu was notified last week of one
11 of their, a gal, I can't think of her name, but I
12 mean about if he made a decision, what are we
13 doing. They're dotting all their t's and i's,
14 crossing the t's. There's a lot of landowners out
15 there, even further up. After awhile they're old
16 and then all of a sudden they give in.

17 There's a lot of them that haven't been
18 talking to in a lot of places. There's people
19 across the freeway to the west that are getting
20 this pipeline in the road, missing some houses,
21 then it's back on somebody else's place.

22 A mile from our place it's missing two
23 people. It's very unfair. I've been here -- I'm
24 four generations. I drive that road every day.
25 And why don't we get treated the same.

1 The next thing is on the gal the other
2 day, talking to Mr. DeLu, dotting all the t's and
3 the crosses, and if it doesn't work out then
4 pretty soon eminent domain. It's thrown to him in
5 a roundabout way again. And this has happened
6 many times.

7 That's why I don't do things like this,
8 but I got ahold of Mr. Nottoli and said, hey, is
9 there a problem with the county working with the
10 road since it's already missing some people, and
11 some people it's not. Very unfair.

12 And there hasn't been a problem with the
13 county. They had their road guy came out and he
14 said they'd work right with us. They'd direct
15 traffic and everything to help. And he was at the
16 meeting with Mr. Shetler a couple of times in
17 Herald.

18 So that's my concern. Once it does get
19 approved we have no problem with the project. We
20 didn't have a problem with the nuclear deal. We
21 were downstream from it. We were one of the
22 oldest water rights on that channel that comes
23 from Rancho Seco. But once certain things get
24 approved we're left out hanging in the bag. And
25 you know that. We're just people trying to make a

1 living, and sometimes I don't understand why some
2 people get things and some people don't. And we
3 just want what's fair.

4 CHAIRMAN KEESE: Thank you.

5 MR. PELLANDINI: Yes, sir.

6 CHAIRMAN KEESE: Versus being
7 compensated you'd prefer to see it moved is what I
8 hear.

9 MR. PELLANDINI: Yes, we are very close
10 to the road and we will hopefully be in business a
11 long time.

12 CHAIRMAN KEESE: Thank you. Was Sandra
13 going to speak, or Chrissy?

14 MS. PELLANDINI: No. I just wanted to
15 say that --

16 CHAIRMAN KEESE: If you're going to say
17 it you've got to say it to the mike. We record
18 this, so that's the way it's got to be.

19 MS. PELLANDINI: My name is Sandra
20 Pellandini. I just wanted to say the first time
21 after the gentlemen were in our house and
22 threatened the domain, I got a certified letter to
23 my house the day after the meeting on the 28th
24 stating that they wanted to work with us. I think
25 they should have done that before.

1 The ground that they want to take, our
2 cattle has need for it. Our grandchildren are
3 going to be the ones that are going to have to
4 deal with this later on. And I don't think it's
5 right.

6 My granddaughter is here. And I think
7 she should say something. I know it's taking your
8 time, but I think it's very important for you to
9 know what it's doing to us and our family. And
10 what it's going to be doing later because we do
11 need that ground for our cattle and for our waste
12 and everything else.

13 Thank you.

14 CHAIRMAN KEESE: Thank you. Is Chrissy
15 going to say something? No.

16 (Laughter.)

17 CHAIRMAN KEESE: All right, Karin
18 Schwab.

19 MS. SCHWAB: Good morning, my name is
20 Karin Schwab. I am attorney of counsel with
21 Brigit Barnes and Associates in Loomis. And I
22 represent Mrs. Matilda Mancebo. She owns 234
23 acres adjacent to Arno Road.

24 I also submitted in writing our
25 objections yesterday and it was before I had seen

1 the errata, as well.

2 I have to, though, agree with the
3 gentleman who jus said that if you take action on
4 it our concerns are the same, and that is where
5 the gasline is being proposed.

6 In the case of Mrs. Mancebo it's being
7 proposed along her entire frontage next to Arno
8 Road. It will impact one domestic well and one
9 irrigation well.

10 When she has inquired as to what will
11 happen if that pipeline should damage the well,
12 the response she has continually gotten, well,
13 we'll just repair it.

14 There is, as everyone knows in
15 Sacramento County, an extreme issue with
16 groundwater. The thought that a pipeline would be
17 put on top of a domestic drinking well that serves
18 this entire farm with simply that explanation is
19 not, in our opinion, acceptable.

20 Moreover, I was originally thinking the
21 errata does deal with the issue of at least
22 working with these landowners in what we believe
23 should be an equitable manner; however, I don't
24 think it goes far enough because it does leave the
25 discretion to SMUD as to whether they will

1 relocate the line or not. I don't believe that
2 that is appropriate, and moreover, I don't
3 believe, under CEQA, the analysis has been
4 completed to determine the feasibility.

5 In my letter, and I will not read the
6 entire letter, I want to keep this brief for the
7 Commissioners, but our contention is that what has
8 been glossed over in this environmental review has
9 been the impacts on agricultural lands. The EIR
10 simply states yes, it will impact some
11 agricultural uses and in other areas it won't.

12 What it doesn't discuss, and
13 particularly in the instance of Mrs. Mancebo's
14 property, it does not discuss what a 35-foot
15 easement with language that is highly restrictive
16 in terms of the types of uses that may be
17 conducted on that property after the easement is
18 conveyed. It does not discuss in any manner or
19 detail what the impacts on land uses in this area
20 will be. As a result there's no mitigation
21 proposed.

22 Now, in the errata I note that now there
23 is a condition of certification included which is
24 land-1. I believe that's a start in a good
25 direction. I don't believe it goes far enough.

1 What the condition should be is that
2 SMUD is required, to the extent feasible, as
3 defined under CEQA, which means not just
4 monetarily, to the extent feasible SMUD should be
5 required to move the easements off of private land
6 and into county right-of-way.

7 The area proposed for Mrs. Mancebo's
8 easement is adjacent to Arno Road, which is a
9 county right-of-way. Her daughter has repeatedly
10 asked why it cannot be relocated. The only answer
11 is it's too expensive. That's not good enough.

12 I would note that the errata mentions
13 that portions of Valencia Road have been relocated
14 into the country right-of-way. We should point
15 out that portions of Eschinger Road, which is on
16 the other side of the freeway, have also been
17 relocated into the county right-of-way.

18 What's never been explained to Mrs.
19 Mancebo is why her area cannot be moved into the
20 country right-of-way as well.

21 Moreover, I would point out again, going
22 back to the fact that we have two wells that may
23 be impacted on this property, there's no analysis
24 in this environmental document as to what might
25 happen should these wells become contaminated due

1 to any of the construction work and impact the
2 groundwater. That's totally left out.

3 I'd also point out finally, and of
4 course it wouldn't get to that point because the
5 analysis was never done to begin with, but there's
6 no alternatives for the pipeline. I have to
7 question how it is if you have an impact, a
8 potential impact on land uses and groundwater that
9 there was no alternative discussed in the EIR in
10 terms of the alignment of the pipeline.

11 The same runs true for the valve
12 stations. Ms. Mancebo's daughter, during the
13 evidentiary hearing of August 28th, presented a
14 feasible alternative for valve station number two,
15 which would be off of her property onto property
16 that is not farmed, and is already impacted by the
17 pipeline. Yet there's no discussion in especially
18 land-1, the new condition, requiring SMUD to also
19 look at other locations for all three valve
20 stations, which I might add, are all proposed for
21 private property at this point.

22 Therefore, I must still object to the
23 approval of the certification of this project
24 because at that point these landowners are left
25 vulnerable to SMUD's unilateral discretion as to

1 where they put the pipeline.

2 In the alternative I would request that
3 you strengthen land-1 by requiring SMUD to look at
4 a feasible alternative alignment of the pipeline
5 within public rights-of-way, and the same for the
6 valve stations.

7 And with that, I thank you.

8 CHAIRMAN KEESE: Thank you very much.

9 COMMISSIONER PERNELL: Thank you.

10 MR. COHN: Mr. Chairman, will we be
11 allowed to respond at some point?

12 CHAIRMAN KEESE: Yes, you will. In
13 fact, I don't believe I have any -- I know I have
14 another speaker here, but on another subject, on a
15 general subject. So, we will get to Mr. Kelly in
16 a moment.

17 On this specific subject?

18 MR. COHN: Yes.

19 CHAIRMAN KEESE: Yes, I think it would
20 be appropriate.

21 MR. COHN: Yes, first of all, let me
22 indicate that we did go through a very lengthy
23 process, including an evidentiary hearing process.
24 And I appreciate the concerns from the property
25 owners that you've heard from. And we have, in

1 fact, been in contact with these property owners
2 over the months, none of which, I might add, ever
3 intervened in the case of presented evidence in
4 the hearing.

5 But be that as it may, let me just state
6 that in our 50-mile pipeline that preceded this,
7 that connects to our three existing pipelines, we
8 went through even more agricultural area than
9 we're talking about here. And we crossed, in that
10 case, in excess of 150 parcels. Not one of those
11 went to an eminent domain trial.

12 So I think our record, you know, there's
13 a concern here, I think, on the part of some
14 property owners that SMUD would not negotiate in
15 good faith. But, in fact, our record's pretty
16 clear that we go well out of our way before we
17 actually try a case in eminent domain.

18 And a lot of the issues that you're
19 hearing about are issues that we really can't get
20 into too much detail until we have a certificate
21 and we actually know that we have a project that
22 we can go out and acquire property. So, it's
23 natural that a lot of property issues are not
24 resolved until after certification.

25 As to the 35-foot easement, the width,

1 this is common industry practice. But more
2 important, it's been the record before this
3 Commission that that is necessary. It isn't just
4 a question of having sufficient width to cover the
5 immediate width of the pipe. You need, for safety
6 reasons, need to be sure that the easement covers
7 for repair, replacement and to prevent damage to
8 the pipeline and to the public safety.

9 I think the last speaker, Ms. Schwab,
10 spoke to the lack of alternatives. Actually we
11 exhaustively looked at alternative alignments for
12 the last two years. And I appreciate she's coming
13 in at this last moment and may not be aware of
14 that record. But, in fact, that's there. And the
15 Committee did find that there are no superior
16 alternatives. And that, in fact, there are no
17 significant impacts from this project.

18 But I'd like to also allow Mr. Shetler
19 to speak to some of the issues with respect to
20 negotiations that have occurred.

21 MR. SHETLER: Yes, thank you. I have
22 met with various of the landowners, both in public
23 settings, in conjunction with Supervisor Nottoli,
24 and individually, particularly the Pellandinis.

25 First of all, what I'd like to say is I,

1 personally, do not threaten people with eminent
2 right of domain. Certainly when I talk to people
3 I make it clear that that is an option, but it's
4 always SMUD's last option. That is never our
5 preference. We have pretty clear direction from
6 our elected officials that we need to be working
7 with our customer owners in trying to find
8 solutions that are equitable for all the parties.
9 And we would always consider eminent domain to be
10 the last thing we would consider. And we would
11 look at all other options first.

12 Certainly I'm not in a position to
13 negotiate with the landowners sitting here in the
14 Commission hearing, but I do want to reiterate the
15 fact that we intend to be fair and equitable; try
16 to find a solution that works.

17 We have been through a very long process
18 to try to find a route that minimizes impacts from
19 a lot of different perspectives; from
20 environmental perspective, from landowner
21 perspectives. We also have to be concerned about
22 long-term expansion of facilities like highways
23 and interchanges and try to locate our valve
24 stations and our piping routing such that we can
25 anticipate where there might be widenings of roads

1 that could impact us. And so we try to minimize
2 those impacts over the long haul.

3 CHAIRMAN KEESE: Thank you.

4 COMMISSIONER PERNELL: Mr. Chairman, on
5 this particular issue I would just note for the
6 record that the Committee had a special Committee
7 hearing on the 28th. And a lot of the issues came
8 up at the Committee hearing.

9 We were somewhat surprised in that the
10 residents' first initial contact with SMUD was not
11 a positive one. Having responded to SMUD, the
12 applicant and Mr. Shetler at that Committee
13 hearing, and giving the Committee his assurances
14 that that would change. And I think that he's
15 done that again today.

16 We have covered the issue of, and the
17 previous speaker who is my first time seeing her,
18 but we had covered in that Committee meeting the
19 issue of the pipe running over the groundwater and
20 SMUD has agreed to take responsibility for that.

21 So a lot of these issues we have
22 covered. We have been on this case. We've been
23 out there several times. We also have a letter
24 from Supervisor Nottoli.

25 But on the issue of eminent domain, it

1 is not the Committee's responsibility to
2 negotiate. That's a separate issue. And for the
3 speakers who come and say demand SMUD do
4 something, this Committee, with our proceedings,
5 doesn't allow us to negotiate for either
6 community, applicant or anyone else. That's a
7 separate proceeding.

8 What the Committee has done was
9 recognize and left flexibility in the Presiding
10 Member's Proposed Decision for the outcome of
11 whatever that might be.

12 So we realize, and we've had an
13 additional hearing on this topic. And we realize
14 the concerns of the community, and I want to thank
15 all of them, actually, for coming out and
16 expressing their concerns with the Committee.

17 But on the eminent domain issue, the
18 Committee felt that it is not our responsibility
19 to negotiate for anyone in this area; but to
20 recognize that there is an issue, and in this case
21 leave some flexibility for the outcome.

22 CHAIRMAN KEESE: Thank you. And, Mr.
23 Kelly, we're going to have to have you wait just
24 one more minute. We have a late request by
25 Delores Gregorio to speak. And ask you to keep it

1 relatively brief.

2 MS. GREGORIO: Thank you and good
3 morning. My name's Delores Gregorio and I'm here
4 with my mom, Matilda Mancebo. And I just wanted
5 to reiterate two important points.

6 There will be a valve station and a
7 pipeline that will go through our property. And
8 it covers the entire frontage. And I understand
9 that you cannot negotiate eminent domain, and I
10 understand that you don't have control over that.

11 But my concern is about the disparate
12 treatment being given to landowners. Because
13 initially I was told that exceptions were not
14 being made. And then I did speak to other
15 landowners and realized that there are exceptions
16 being made just less than a mile away from our
17 property.

18 It seems unfair to have to burden our
19 property with it, when you could go ahead and put
20 it in a public right-of-way, and it's been done
21 for others. So these exceptions have been made on
22 both sides of the freeway; it's not only on our
23 side of the road.

24 A majority of the pipeline is within a
25 right-of-way easement, and so when you don't see

1 so many landowners coming up to speak, it's
2 because the majority of it is being placed between
3 a right-of-way. So there are fewer landowners, I
4 believe, who are being affected.

5 Because when I contacted some landowners
6 I realized that the pipeline was being placed
7 underneath the transmission towers, which are
8 located behind our property.

9 I understand that you can't do anything
10 about eminent domain, but I do question whether or
11 not there is disparate treatment going on when our
12 property is being burdened so heavily.

13 That's all.

14 CHAIRMAN KEESE: I think that we have
15 heard from SMUD that they have negotiated with
16 some people, and that once this is firm they will
17 be negotiating with others. And that exercising
18 eminent domain, which is expensive for them, and
19 both legally expensive and expensive to make the
20 payments that result from eminent domain --

21 MS. GREGORIO: I understand, and I
22 appreciate your time and --

23 CHAIRMAN KEESE: -- and we're --

24 MS. GREGORIO: -- the Commissioners'
25 time from the last meeting --

1 CHAIRMAN KEESE: It's my understanding,
2 and I will clarify, that the Committee has tried
3 to go as far as they can go in pushing this issue.
4 And we'll ask to hear from counsel on that, also.

5 MS. GREGORIO: Okay. One last thing
6 that I'd just like to make clear. When we were
7 first approached by SMUD, and I know that I'm just
8 reiterating a point that was made at the August
9 28th meeting, our first encounter was basically a
10 conversation where we were told that you either
11 work with us or against us. And that was the
12 first initial contact that we had.

13 And basically it hasn't changed in the
14 sense that we've received letters, but we haven't
15 had any movement. Our initial valve station
16 continues to stay on our property even though they
17 attempted, they told us they attempted to move it.
18 It's been moved to another site. It still stayed
19 on the corner of our property.

20 So my only concern is that other growers
21 are being allowed to put it in a right-of-way,
22 whereas we are not.

23 Thank you.

24 CHAIRMAN KEESE: Thank you. Mr. Matt
25 Kelly, finally.

1 MR. KELLY: Good morning, Commissioners.

2 My name is --

3 CHAIRMAN KEESE: Good morning.

4 MR. KELLY: -- Matt Kelly; I'm the
5 Executive Secretary Treasurer of the Sacramento-
6 Sierra's Building and Construction Trades Council.
7 I represent trade union craftsmen, many of whom
8 are in the room today.

9 We want to put our support behind this
10 project on SMUD's behalf. Many of the people here
11 today have not been in favor of this project. We
12 are firmly in favor of this project.

13 We understand that SMUD has many
14 responsibilities to its customers and its
15 ratepayers, and one of them is to provide reliable
16 source of energy at reasonable rates. And this
17 power plant project, the Cosumnes Power Plant
18 project will help SMUD achieve those goals of
19 reliable energy.

20 It will also provide many jobs in the
21 construction industry to local craftspeople. It
22 will be a shot to the economy in this area to say
23 the very least.

24 I think that SMUD has the reputation
25 that is impeccable in the community. They have

1 been a good partner to many many organizations.

2 And they have been at the front of every line when
3 it comes to supporting an organization or a
4 particular charity.

5 Nonetheless, I've got every confidence
6 that SMUD will do what's right. We have seen that
7 many times over again. And I would like to again
8 reiterate that the building trades and all of our
9 affiliated trade unions stand firmly behind this
10 project.

11 And I would like to thank Commissioners
12 Pernell, Mr. Garret, Mr. Diaz for their work. I
13 attended several hearings, both in this arena and
14 in Herald. And I believe that they have done a
15 tremendous job in insuring that everybody was
16 heard and everybody was given an opportunity to
17 speak every bit along the way on this project.

18 CHAIRMAN KEESE: Thank you.

19 MR. KELLY: Thank you.

20 CHAIRMAN KEESE: Thank you very much.
21 Commissioner Pernell, the pipeline issue has been
22 raised and the Committee has attempted to deal
23 with it in the errata.

24 COMMISSIONER PERNELL: Yes, Mr.
25 Chairman. Let me just say that this has been one

1 hearing that has been somewhat difficult because
2 of the issues. However, the community has been
3 very accommodating to us and the Committee, so I
4 want to thank them for that.

5 I'd also like to thank our staff, and
6 all of the intervenors. And this is not an easy
7 process to intervene in. And so there is no hard
8 feelings here. But what the Committee wanted to
9 do was get the facts out. And then we think we
10 have a great representation of the facts and the
11 issues in the PMPD, the Presiding Member's
12 Proposed Decision.

13 So, with that, Mr. Chairman, I'd like to
14 move the adoption of the Presiding Member's
15 Proposed Decision for the Cosumnes Power Plant
16 with the Committee's September 9th errata.

17 COMMISSIONER GEESMAN: Second.

18 CHAIRMAN KEESE: Motion, Commissioner
19 Pernell; second, Commissioner Geesman.

20 COMMISSIONER PERNELL: Mr. --

21 MS. HOLMES: Staff has not had an
22 opportunity to provide comments yet on this
23 project, and we do have comments.

24 CHAIRMAN KEESE: That's a good thought.
25 Yes, that's a good thought.

1 (Laughter.)

2 CHAIRMAN KEESE: Thank you. I'm sorry.
3 Staff.

4 MS. HOLMES: Thank you. Caryn Holmes;
5 I'm the Staff Counsel assigned to this project.
6 On my right is Kristy Chew, who was the Project
7 Manager.

8 Staff filed comments on the PMPD on
9 September 3rd. I won't reiterate those comments,
10 with one exception. Staff would recommend that
11 the Committee include a more complete discussion
12 and description of a joint stipulation that was
13 signed by both SMUD and staff regarding water
14 resources.

15 This joint stipulation was a critical
16 factor in staff's conclusion that there were no
17 water supply issues, and we believe that the PMPD
18 would be better supported if there was a more
19 complete discussion of the stipulation within it.

20 And with that I'll move on to staff's
21 response to the errata that we received yesterday
22 afternoon. The first --

23 CHAIRMAN KEESE: Let's deal with item
24 number one, Mr. Shean.

25 MR. SHEAN: The stipulation between the

1 staff and SMUD was that for phase two, if it is to
2 be constructed, SMUD will undertake to review the
3 availability and feasibility to use reclaimed
4 wastewater for that unit. And potentially even
5 for substituting for similar water in the first
6 phase.

7 The Committee has referred to the most
8 relevant terms of that stipulation. We just
9 didn't feel that we needed to include the
10 document, itself, since we had made reference to
11 it, just as we refer to the AFC, the FSA and other
12 documents. It didn't add anything to the PMPD to
13 add paper.

14 We'd made the thought; we'd communicated
15 the effect of the stipulation --

16 CHAIRMAN KEESE: Is it on record in
17 the --

18 MR. SHEAN: Yes, it is. So, it's within
19 our record. It's been referred to fully for the
20 purpose of the import to the PMPD. We know that
21 it means that it will be operative --

22 CHAIRMAN KEESE: Thank you.

23 MR. SHEAN: -- and that's it.

24 MS. HOLMES: Thank you.

25 CHAIRMAN KEESE: Thank you. Okay, item

1 2.

2 MS. HOLMES: Next I'll turn to staff's
3 comments on the errata that were filed yesterday.
4 The first item has to do with a new paragraph in
5 the Executive Summary. And we have a couple of
6 points to make about that paragraph.

7 The intent of the language that SMUD and
8 staff agreed to --

9 CHAIRMAN KEESE: Tell us very
10 specifically where we are.

11 MS. HOLMES: On the errata to the PMPD,
12 the very first item, it says, page 3, Executive
13 Summary.

14 CHAIRMAN KEESE: Got it.

15 MS. HOLMES: Staff and SMUD had agreed
16 to language regarding both the scope and the
17 timing of the licensing of phase two. And our
18 recommendation to you with respect to this
19 language is that the language that staff and SMUD
20 agreed to be incorporated directly. And there are
21 a couple of reasons for this.

22 First of all, there are two issues. One
23 has to do with the timing of the review; and the
24 other has to do with the scope of the review. The
25 language that you see in the errata refers to an

1 expedited review. And it's not clear whether
2 that's referring to the expedited AFC process,
3 which may or may not be continued at the end of
4 this calendar year.

5 The language that staff and SMUD had
6 agreed to specifically referred to either a 12-
7 month AFC or if the expedited AFC process were
8 continued, and SMUD met the requirements for that
9 process, that that process would be available to
10 them, as well.

11 And I think that that's a little bit
12 clearer reference because it's much more specific
13 than just a statement about an expedited review.

14 The second issue that we have concerns
15 about with respect to the Executive Summary has to
16 do with the scope of the review. The language
17 that SMUD and staff agreed to had a time limit.
18 In essence what we said was if SMUD files its
19 application for phase two within three years,
20 staff will assume that there's no issues
21 associated with most of the areas, the exceptions
22 being transmission system engineering, air quality
23 and water resources, which are appropriately
24 listed in here.

25 And if an AFC were to be filed after

1 that three-year period, then staff would
2 presumably go forward with a full AFC review of
3 the project, unless SMUD could demonstrate that
4 there hadn't been significant changes.

5 In other words, it's simply a shifting
6 of the burden of the proof. If SMUD files within
7 three years, the burden would be on SMUD to
8 show -- excuse me, the burden would be on staff to
9 show that we needed to conduct a more thorough
10 review. If SMUD were to file after three years,
11 the burden would be on SMUD to show that we don't
12 need to do that. And we think that's an
13 appropriate discussion of the scope of review.
14 And would encourage the Committee to include the
15 language that SMUD and staff had agreed to on
16 that.

17 The second item on the errata is the
18 third item, it says page 68, biology, condition
19 bio-12.

20 Staff's FSA had recommended a setback
21 for seasonal streams and swales across the laydown
22 area of 100 feet. The FSA, as published, includes
23 the 100-foot setback.

24 SMUD requested that the 100-foot setback
25 be reduced to 25 feet. The language that's been

1 provided in the errata refers to a setback as
2 provided in the Army Corps of Engineers 404
3 permit.

4 In the first place I'd like to point out
5 that we don't have that permit, so we don't know
6 what setback they will require. But in the second
7 place, we think that the evidence in the record
8 supports a 100-foot setback. We provided evidence
9 and testimony explaining what kinds of impacts to
10 downstream resources could occur, and we think
11 it's more environmentally protective to have the
12 100-foot setback.

13 If the Committee were to choose to go
14 with the 25-foot setback staff believes that this
15 raises the possibility that such a change would be
16 a substantive change requiring re-noticing under
17 CEQA.

18 COMMISSIONER PERNELL: Are there any
19 others?

20 MS. HOLMES: Yes. Just a few. The
21 discussion that's on page 2 of the errata, I don't
22 know whether this discussion is going to be
23 incorporated into a resolution or not. But we
24 simply wanted to point out that there should be
25 some additional conditions referenced in the, I

1 think it's the third full paragraph.

2 If you look at that there's references
3 to biology conditions, cultural conditions and
4 transportation conditions. And staff believes
5 that bio-20, bio-21 and trans-7 should be added to
6 that list.

7 Lastly, with respect to the land use
8 issue that was discussed earlier today, staff has
9 some comments and recommendations on the proposed
10 language for land-1. Our comments are based on
11 the fact that there was a survey area that was
12 included in the AFC and in the data responses.
13 And we want to make sure that if there's any
14 changing of the alignment of the pipeline that
15 that only takes place within the area that staff
16 has already reviewed. Otherwise, the applicant
17 would have to come back with an amendment.

18 The language that we think that would
19 accomplish that would be to add -- I'll just read
20 it to you: The project owner shall include a
21 statement to the CPM identifying those locations
22 where the pipeline route is to be relocated to any
23 area already analyzed by CEC Staff during this
24 proceeding from private property to avoid impacts
25 to agricultural lands or uses.

1 And we think that that would better
2 protect against the situation where the pipeline
3 route were moved to an area that the CEC Staff
4 hadn't already surveyed.

5 And in the verification the sentence
6 that we would prefer to see would be: The project
7 owner shall provide a statement, -- we would add
8 the phrase: identifying any such changes in the
9 monthly compliance report.

10 And with the changes that we --

11 CHAIRMAN KEESE: Let me just try to
12 dispose of at least one of these. Any problems
13 from SMUD on that clarification that it would be
14 in the area reviewed?

15 MR. COHN: Can we have a moment. That's
16 the first we've heard of it, so -- do you have
17 that in writing?

18 MS. HOLMES: I have it in pencil. Do
19 you want to take it --

20 (Laughter.)

21 CHAIRMAN KEESE: I guess the question on
22 this one is what is the area that has been -- that
23 staff has looked at.

24 MS. HOLMES: Unfortunately we were not
25 able to identify it specifically yesterday because

1 we received the errata so late. What we're trying
2 to capture is the areas that were surveyed for
3 cultural and biological resources. They're
4 referenced in the AFC in some of the supplements
5 and some of the data responses.

6 But we did not have the ability between
7 then and now to specifically identify those. I
8 think it should be clear from the record.

9 CHAIRMAN KEESE: Recognizing the
10 complexity of some of the issues, it would be nice
11 to clarify what we're talking about on a number of
12 the issues that you brought forward. I'm going to
13 suggest that we recess this hearing and that you
14 discuss this privately amongst the parties, Mr.
15 Shean coordinating.

16 And we'll take up the next item, the
17 Palomar case. And then we'll come back to you.

18 MR. SHEAN: I actually think we're a lot
19 closer than what -- because I believe that the
20 applicant would probably concur that the removal
21 or the relocation of the pipeline needs to be to
22 any location reviewed in this proceeding. And
23 that that conforms essentially to the intent of
24 the language that the staff had produced with
25 regard to that.

1 So that we know that this is a matter
2 that the area of relocation --

3 CHAIRMAN KEESE: Okay, then is that, --

4 MR. SHEAN: -- so that I think they'll
5 find that satisfactory.

6 CHAIRMAN KEESE: You're going to get me
7 into negotiating now.

8 MR. SHEAN: Okay.

9 CHAIRMAN KEESE: Is that acceptable to
10 staff?

11 MR. SHEAN: Sure it is.

12 (Laughter.)

13 COMMISSIONER PERNELL: Mr. Chairman, --

14 CHAIRMAN KEESE: We had --

15 COMMISSIONER PERNELL: Mr. Chairman, --

16 CHAIRMAN KEESE: -- a number of issues
17 that were presented here. Why don't we do that,
18 please.

19 MR. SHEAN: Yeah, okay.

20 CHAIRMAN KEESE: We'll ask you to --

21 COMMISSIONER PERNELL: Right.

22 CHAIRMAN KEESE: -- we'll recess this
23 item. We'll ask you to look it over and make sure
24 that we all know what is being presented. And
25 we'll come back to it.

1 We will then take up item 5. Palomar
2 Energy Project. Consideration and possible ruling
3 on request filed by Intervenor Powers' counsel
4 regarding his ability to participate via
5 teleconference at the August 6, 2003 Commission
6 hearing on the PMPD.

7 I will ask at this time -- I will first
8 apologize to Mr. Briggs for the lack of
9 communication via telephone at our last hearing.
10 But I'd like to check and make sure that we have
11 Mr. Briggs, Mr. Powers and Mr. James Shoemaker on
12 the phone.

13 Let's start with Mr. Briggs.

14 MR. BRIGGS: Corey Briggs is here, and
15 Bill Powers is right now leaving for a meeting.

16 CHAIRMAN KEESE: Okay. And Mr.
17 Shoemaker? James Shoemaker?

18 MR. SHOEMAKER: Yes, I'm here. Can you
19 hear me?

20 CHAIRMAN KEESE: Yes, we can. Thank
21 you. I'm just clarifying that you're here and
22 that we have audio connection at this time. We'll
23 come back to you.

24 Who's going to start us off, Ms. Gefter?

25 MS. GEFTER: I'll start you off.

1 Mr. Briggs filed a request to the
2 Commission to void the adoption order contending
3 that he was denied an opportunity to present oral
4 argument at the Commission's adoption hearing on
5 August 6th because he was on the teleconference
6 phone but apparently there was a miscommunication
7 and it wasn't made known to the Commission that he
8 wanted to speak.

9 So, you know, we are going to allow Mr.
10 Briggs to make his presentation at this point.

11 And then also Mr. Briggs, on behalf of
12 his client, Mr. Powers, filed a petition for
13 reconsideration and that would be item 6. I
14 probably should go with item 5 first, and then
15 item 6, but that's your call.

16 CHAIRMAN KEESE: I think -- Commissioner
17 Geesman.

18 COMMISSIONER GEESMAN: This filing that
19 Mr. Briggs made, can we construe that as a
20 petition for reconsideration and then grant the
21 reconsideration and then give Mr. Briggs an
22 opportunity to tell us what presumably he would
23 have told us on August 6th?

24 MS. GEFTER: Yes, that's probably an
25 accurate way to construe the request.

1 COMMISSIONER GEESMAN: I just want to
2 make clear --

3 MS. GEFTER: Yes.

4 COMMISSIONER GEESMAN: -- that we are
5 responding to the request that he has made. So,
6 Mr. Chairman, I would move --

7 MR. MILLER: I would like to -- Taylor
8 Miller, counsel for the applicant. The matter
9 before you as to reconsideration is whether
10 reconsideration should be granted or not. Our
11 position is that it should not be granted.

12 And so, in our view, any presentation
13 Mr. Briggs would make would be, as to whether a
14 petition for reconsideration should be granted,
15 not granting of the reconsideration, and then
16 proceeding to hear it. Is that clear?

17 MS. GEFTER: Well, I think what the --
18 if I could respond to Mr. Miller, I think what the
19 Commission is proposing is to construe the request
20 as a petition for reconsideration. And then to
21 determine whether they will grant the petition for
22 reconsideration and allow Mr. Briggs to address
23 the Commission at this time.

24 MR. MILLER: I think that's agreeable to
25 us. And, of course, he did file a petition for

1 reconsideration which we're going to be also
2 hearing, so --

3 COMMISSIONER GEESMAN: We'll deal with
4 that next.

5 CHAIRMAN KEESE: Yeah, it --

6 MR. MILLER: I'm not sure what the
7 difference would be --

8 MS. GEFTER: Well, there would be two
9 petitions for reconsideration here. Okay, and
10 that we're dealing with --

11 CHAIRMAN KEESE: Well, by dealing --

12 MS. GEFTER: -- item 5 right now, and
13 then subsequently item 6.

14 COMMISSIONER PERNELL: Mr. Chairman, if
15 we could proceed, I would agree with Commissioner
16 Geesman.

17 CHAIRMAN KEESE: All right, we're going
18 to keep the record clear. We'll deal with item 5
19 first. Mr. Briggs, --

20 COMMISSIONER GEESMAN: Let me move first
21 that we grant his petition for reconsideration.

22 COMMISSIONER PERNELL: Second.

23 CHAIRMAN KEESE: Okay.

24 MR. KRAMER: Paul Kramer for the staff.
25 My one concern is I just want to make it clear

1 that in granting the petition for reconsideration
2 we are not somehow starting a new clock so that
3 within 30 days from whatever action you take today
4 another petition for reconsideration could be
5 filed. Because --

6 COMMISSIONER GEESMAN: I think Mr.
7 Chamberlain can answer that.

8 MR. CHAMBERLAIN: Yes. Commissioners,
9 should the Commission grant the petition for
10 reconsideration it will then take an action on
11 reconsideration. That action upon reconsideration
12 can occur either today, or it could occur at a
13 later time if you decide that you need additional
14 evidence, or you need to conduct more hearings.

15 If you were to issue a new decision that
16 was a significant change from the decision that
17 you have already issued, then I believe a petition
18 for reconsideration on the new aspects of that
19 decision would be in order.

20 But I believe that if, upon considering
21 the matter -- reconsidering the matter, you decide
22 that your original decision was the correct one,
23 and you simply reissue it, then no further
24 reconsideration would be in order. And only
25 judicial review would be in order at that point.

1 CHAIRMAN KEESE: Thank you. All right,
2 are we ready for Mr. Briggs? I'm sorry, we're
3 going to vote on Commissioner Geesman's motion.

4 All in favor?

5 (Ayes.)

6 CHAIRMAN KEESE: Opposed? Adopted three
7 to nothing.

8 Mr. Briggs.

9 MR. CHAMBERLAIN: Mr. Chairman, may I
10 ask, were you going to hear Mr. Briggs' concern
11 that he hadn't been heard?

12 CHAIRMAN KEESE: We're going to hear
13 from Mr. Briggs, and we're going to hear
14 everything that Mr. Briggs would have told us at
15 the last meeting.

16 MR. CHAMBERLAIN: Okay, let me at least
17 have something then for the record.

18 CHAIRMAN KEESE: Thank you.

19 MR. CHAMBERLAIN: This still has to do
20 with item 5. I recognize what your predilection
21 is, that is to grant his petition for
22 reconsideration on procedural grounds.

23 But he has also filed a petition in the
24 superior court alleging that he was not given an
25 opportunity to address the Commission even though

1 the Commission knew or had notice that he was on
2 the telephone and desired to address the
3 Commission.

4 In fact, I believe the facts are
5 somewhat different from that, and I have a
6 declaration from Song Her that lays out the facts
7 as she understood it. I think that should be put
8 in the record in case Mr. Briggs wants to continue
9 this action in the superior court.

10 CHAIRMAN KEESE: We will put that on the
11 record. Mr. Briggs, would you address that issue
12 as you get started?

13 MR. MILLER: I'm sorry to interrupt once
14 again, but I must. This is Taylor Miller, again.

15 Do I understand that an action will be
16 taken on the petition to nullify, which would be
17 to deny it? We did file an opposition to that. I
18 just want that noted for the record. And that
19 remains our position.

20 And we also, I would have to say,
21 respectfully object to granting the petition for
22 reconsideration. We believe that Mr. Briggs and
23 Mr. Powers, I should say, as the principal party,
24 was not prejudiced by the failure of Mr. Briggs to
25 be able to speak at the last hearing. And we'd

1 just like to register that position with you.

2 We don't believe he was prejudiced in
3 any way. And therefore it is not necessary to
4 grant a petition for reconsideration on that
5 procedural ground.

6 MS. GEFTER: Okay. And if I could
7 clarify the proceeding here. As the Chairman has
8 indicated, he's going to allow Mr. Briggs to speak
9 and tell the Commission what he would have told
10 them on August 6th. Then staff will have an
11 opportunity to put on the -- to offer the
12 declaration from Song Her into the record and
13 allow the Commission to deal with that
14 information. And then the applicant may make your
15 presentation.

16 MR. MILLER: All right, thank you.

17 CHAIRMAN KEESE: Thank you.

18 COMMISSIONER PERNELL: Thank you.

19 MR. BRIGGS: This is Corey Briggs. Can
20 I address the Commission now?

21 CHAIRMAN KEESE: Yes, you can.

22 MR. BRIGGS: My voice is going. Can you
23 hear me okay?

24 CHAIRMAN KEESE: Yes. Yes, we can.

25 MR. BRIGGS: I'm honestly not quite sure

1 what we've just agreed to. I do know that I
2 haven't agreed to any of it. And as a matter of
3 procedure, I want to point out that we're only
4 talking about item 5, which is the consideration
5 of our request nullify and void the adoption
6 order.

7 I was never told that I would be
8 expected to address the Commission based on what I
9 was going to say at the August 6th meeting. My
10 understanding from the agenda is simply that the
11 Commission was going to take up whether to grant
12 or deny that request to nullify and void.

13 I'm not prepared at this time, because
14 of what the agenda says, to make the presentation
15 that I was going to make on August 6th. And
16 therefore I can't do it.

17 The only issue I'm prepared to address
18 on this item at this time is whether or not that
19 request, which, to clarify, is not my request,
20 it's my client's request. He is the principal
21 party; he's the intervenor; he's the party who was
22 denied an opportunity to have his attorney speak
23 on his behalf and every other party is allowed to
24 do.

25 CHAIRMAN KEESE: Mr. Briggs, I would

1 point out that we did hear from your client for 30
2 or 35 minutes after he had indicated, I believe,
3 that he was going to be speaking for 10 or 12.
4 And we did not hear from your client an indication
5 that his attorney also wanted to speak.

6 MR. BRIGGS: And at no --

7 CHAIRMAN KEESE: We regret that you were
8 not able to get -- that while you were on the
9 telephone you were not able to make contact in any
10 fashion; and it was our intent not to limit you
11 today.

12 So, feel free to make your presentation
13 on item 5.

14 MR. BRIGGS: The only presentation is to
15 the merits as to whether or not my client was
16 denied an opportunity to have his attorney speak.
17 At no point in any of the proceedings leading up
18 to the August 6th meeting did my client ever have
19 to be asked whether his attorney desired to speak.
20 It's been the practice of this Commission in every
21 hearing, in every step of this proceeding, to let
22 the attorney speak and to address the attorney
23 directly.

24 My client figured that you guys would do
25 the same thing on August 6th that has been done at

1 every other proceeding. It's not his
2 responsibility to say, by the way, my attorney
3 wants to talk. The Commission knew that I was on
4 the line; the Commission, the day before, sent me
5 an email saying we look forward to hearing from
6 you, that's a quote.

7 And so I believe the Commission should
8 have made an effort to get me on the phone. I've
9 reviewed the declaration from Song that I received
10 this morning, even though it's dated yesterday,
11 and I would point out that the declaration is
12 actually deficient. It's not made under penalty
13 of perjury. It's made on information and belief
14 and to the best of my knowledge.

15 I would also point out that it's full of
16 speculation and hearsay and guesses as to about
17 what happened by some operator that works for MCI.
18 Nobody knows the rest of the story. Nobody has
19 asked for the rest of the story. There hasn't
20 been an investigation into all the facts of this
21 story.

22 So, if the Commission is inclined to
23 grant the request, the request should be granted
24 as a procedural matter, and then we should be
25 given notice -- I'd be willing to do it on even

1 shorter notice than the statute requires -- to
2 make the presentation that we were going to make
3 on August 6th.

4 If the Commission is not inclined to
5 grant the request, then it simply denies it. And
6 we proceed in the superior court.

7 CHAIRMAN KEESE: Mr. Chamberlain.

8 MR. CHAMBERLAIN: Yes, Mr. Chairman. I
9 believe that the Commission can grant this, and I
10 believe that is basically where you were going,
11 that you can grant this and you can hold the
12 hearing on the petition for reconsideration today.
13 And give Mr. Briggs and Mr. Powers everything that
14 due process requires.

15 CHAIRMAN KEESE: Thank you.

16 MR. MILLER: Thank you. I will simply
17 state again that in our filing yesterday on this
18 matter we would recommend that the petition to
19 nullify be denied.

20 We believe that whether or not there was
21 a technical failure that prevented Mr. Briggs from
22 speaking, it's not clear to us and we don't know
23 that. But, even if that were to be the case, as
24 you pointed out, Mr. Chairman, Mr. Powers
25 presented his case in detail at the adoption

1 hearing.

2 In addition to that, he has the
3 opportunity, as he's taken, to raise any issues he
4 cares to in the petition for reconsideration which
5 we'll hear in item 6.

6 And I would note that petition for
7 reconsideration covers exactly the same issues
8 that Mr. Powers discussed on August 6th.
9 Therefore, there doesn't seem to be any evidence
10 that there was anything that was not able to be
11 relayed to the Commission on August 6th. In any
12 event, he has that opportunity, which we'll get to
13 in item 6.

14 And finally, Mr. Powers has had, as well
15 as Mr. Briggs on his behalf, numerous
16 opportunities to present their factual and legal
17 case throughout this whole proceeding to the
18 Siting Committee. And, again, in comments on the
19 PMPD, and again at the Committee Conference.

20 So, I just don't think that there's any
21 failure of due process on the existing record.
22 And therefore I do not think it's necessary to
23 grant his petition.

24 MR. BRIGGS: This is Corey Briggs again.
25 First of all there's been no procedure to look

1 into the facts of this case. So when Mr. Miller
2 says that he doesn't know what happened, he's
3 right. Nobody knows what happened. Even I don't
4 know the whole story because I don't know what
5 happened on the Commission's end. I can only
6 testify as to what I experienced. My staff can
7 only testify as to what they experienced. No one
8 has done an investigation yet into what happened.

9 Second of all, some folks seem to be
10 conflating the petition for reconsideration and
11 the request that the adoption order be nullified
12 and voided. As the adoption order and the
13 petition both made clear, they're not to be
14 confused. The request isn't even a legal
15 requirement. I submitted it on my client's behalf
16 so that thinking the Commission would want to deal
17 with that issue first, it would say yes or no, and
18 then we would go forward with the petition for
19 reconsideration.

20 For this Commission to say, well, we're
21 going to give you a chance, and by the way, in a
22 minute we're going to talk about your petition for
23 reconsideration, when the Commission has already
24 decided to approve this, seems to just confuse a
25 whole bunch of issues.

1 My point in submitting that request is
2 that we wanted an opportunity to address the
3 Commissioners who haven't been involved in this
4 proceeding, before they made up their mind, while
5 the testimony was fresh in everyone's head and
6 coming out at that final public hearing.

7 We were denied that opportunity. The
8 Government Code, the Bagley-Keene Open Meeting
9 Act, requires that we be given that opportunity.
10 Due process requirement of a party require that we
11 be given that opportunity. And the fact is we
12 didn't get it.

13 People want to get caught up in
14 prejudice and the fact that we're making the same
15 argument, I can't even address those because
16 they're beside the point. They're without merit.
17 But they're also beside the point.

18 We were supposed to have an opportunity
19 to address the full Commission, make our full
20 case. Bill Powers is a technical person; I deal
21 with the legal issues. We were not given that
22 opportunity.

23 And that's what we're asking for, an
24 opportunity when this Commission has not already
25 made up its mind as to whether or not it should

1 adopt the adoption order. That's what we were
2 denied. That's what we're asking for with our
3 request to nullify and void the adoption order.
4 Nothing more, nothing less.

5 CHAIRMAN KEESE: Mr. Chamberlain.

6 MR. CHAMBERLAIN: Mr. Chairman, the Open
7 Meetings Act requires that a state body, such as
8 this Commission, shall provide an opportunity for
9 members of the public to directly address the
10 state body on each agenda item before or during
11 the state body's discussion or consideration of
12 the item.

13 However, it then goes on to say this
14 section is not applicable if the agenda item has
15 already been considered by a committee composed
16 exclusively of members of the state body at a
17 public meeting where interested members of the
18 public were afforded the opportunity to address
19 the committee on the item before or during the
20 committee's consideration of the item unless the
21 item has been substantially changes since the
22 committee heard the item, as determined by the
23 state body.

24 So, the Committee hearing on the PMPD
25 meant that the Commission had already basically

1 provided the opportunity. The Commission,
2 nevertheless, conducts its hearings and provides a
3 further opportunity, and went out of its way even
4 further this time, as it does often, by trying to
5 make telecommunications available as a convenience
6 to the parties.

7 The parties do not have to take the
8 chance that something might get messed up with
9 their telephone line or whatever did happen in
10 this case.

11 Today you have the opportunity to
12 consider everything that these parties want to
13 present, both procedurally and substantively, in
14 petitions for reconsideration.

15 And what I don't think Mr. Briggs is
16 entitled to is to suggest that you need to not
17 only grant him that right, but put the whole
18 matter over to another date because he's not
19 prepared to talk about what he was going to talk
20 about on August 6th.

21 CHAIRMAN KEESE: Thank you, Mr.
22 Chamberlain. Is it your recommendation that we
23 honor first the resolution that's pending in front
24 of us?

25 MR. CHAMBERLAIN: Well, as I understood

1 it you already granted his petition. You took it
2 as a petition for reconsideration on procedural
3 grounds and granted it so that he'd have every
4 opportunity to present his case on the petition
5 for reconsideration today.

6 CHAIRMAN KEESE: Okay. Commissioner
7 Geesman.

8 COMMISSIONER GEESMAN: Well, I'd have to
9 say that I'm befuddled by Mr. Briggs' refusal to
10 share with us what he was going to say on August
11 6th. But in light of that, I haven't heard
12 anything that would cause me to suggest that we
13 change our decision of August 6th in any way.

14 And I would suggest we move on to item 6
15 and perhaps Mr. Briggs and Mr. Powers have
16 something to share with us on that item.

17 MR. BRIGGS: Just to clarify for the
18 record, I'm not refusing to tell people what I was
19 going to say on August 6th. The agenda item says
20 that you're going to consider whether to nullify
21 or void adoption order.

22 It nowhere suggests that I should be
23 prepared to go forward today. I'm simply not
24 prepared. The agenda is the notice to the public
25 and to the parties as to what is supposed to take

1 place. If anyone had sent me an email two days
2 ago saying, by the way, you might want to be
3 prepared to do what you were going to do, that's
4 fine.

5 I spoke to Bill Chamberlain last week.
6 He gave me no indication whatsoever that something
7 like this might happen. I'm not saying he knew.
8 I'm simply saying that I had no notice whatsoever
9 that I would be expected to make that
10 presentation.

11 The agenda item tells me prepare to --

12 CHAIRMAN KEESE: Thank you, Mr. Briggs.
13 I think we're prepared to --

14 COMMISSIONER PERNELL: Could I just ask
15 one question. Mr. Briggs, Commissioner Pernell.
16 You're an attorney, aren't you?

17 MR. BRIGGS: That's right.

18 COMMISSIONER PERNELL: Are you familiar
19 with the Commission rules?

20 MR. BRIGGS: Somewhat.

21 COMMISSIONER PERNELL: Thank you.

22 COMMISSIONER GEESMAN: Mr. Chairman,
23 would it be appropriate for me to make a motion
24 indicating that the Commission, for purposes of
25 item 5, chooses to reissue its decision of August

1 6th?

2 I'm trying to figure out a way in which
3 we can close this off so that we can then move to
4 item 6.

5 MR. MILLER: Excuse me, this is Taylor
6 Miller. We would not want to start a new clock
7 for another petition for reconsideration beyond
8 the one we're already dealing with.

9 COMMISSIONER GEESMAN: And I think Mr.
10 Chamberlain --

11 MR. MILLER: That's my concern if you
12 readopt the decision. I would prefer that you
13 deny the petition for nullification and treat it
14 as a petition for reconsideration, if you chose
15 to. But that the nullification request, the
16 voiding of the previous decision should not be
17 granted.

18 COMMISSIONER GEESMAN: I'm searching for
19 the appropriate action to close off item 5 so that
20 we can move to item 6.

21 CHAIRMAN KEESE: Let me ask --

22 MS. GEFTER: I would recommend,
23 Commissioner Geesman, that if the Commission votes
24 to deny this petition for reconsideration you may
25 affirm the existing decision that was adopted on

1 August 6th.

2 CHAIRMAN KEESE: Okay, so the motion
3 that's in front of us is to accept the letter, the
4 filing, as a motion for reconsideration.

5 COMMISSIONER GEESMAN: I believe we've
6 done that.

7 MR. CHAMBERLAIN: That is the --

8 CHAIRMAN KEESE: We've done that.

9 MR. CHAMBERLAIN: That is the legal
10 basis on which the Commission can continue to have
11 jurisdiction over this matter.

12 CHAIRMAN KEESE: Correct, all right. So
13 item 5 is concluded.

14 MR. CHAMBERLAIN: And you have decided
15 to reconsider based on the procedural point that
16 he made. That's my understanding.

17 CHAIRMAN KEESE: Correct. Correct. We
18 are now on item 6, Palomar Energy Project.
19 Consideration of any petitions for reconsideration
20 filed pursuant to Public Resources Code section
21 25530. So this item is up for reconsideration.

22 Mr. Briggs.

23 MR. BRIGGS: Let me just begin by
24 stating for the record what I said on the previous
25 item, and that is our petition for reconsideration

1 in no way should be construed as undermining our
2 request that you nullify and void the adoption
3 order.

4 We're simply trying to preserve our
5 rights and comply with the requirement. But we
6 are not ratifying in any way or giving our
7 approval to the mistake that the Commission made
8 on August 6th.

9 With that said, I would just point out
10 that our petition for reconsideration speaks for
11 itself. It's my hope that all the Commissioners
12 have read it. And if there are questions about it
13 I'm happy to answer them.

14 COMMISSIONER GEESMAN: Mr. Chairman, I
15 have read the petition and find nothing in it that
16 has not been previously taken up, considered and
17 fully resolved. So, I would suggest and would
18 move that we affirm our decision of August 6th.

19 MR. BRIGGS: If I could just add, I'm
20 sorry, the petition for reconsideration, there's
21 an addendum to it, as well, that was submitted on
22 my behalf by my client, Bill Powers, during my
23 absence last Friday. That is also part of the
24 petition for reconsideration.

25 COMMISSIONER GEESMAN: And that is also

1 something that I have read.

2 COMMISSIONER PERNELL: Mr. Chairman, if
3 there's a motion on the floor I would second it.

4 CHAIRMAN KEESE: Motion and a second.
5 Mr. Chamberlain.

6 MR. CHAMBERLAIN: Yes, I would suggest,
7 Mr. Chairman, that you give the applicant an
8 opportunity to address the petition for
9 reconsideration, as well.

10 CHAIRMAN KEESE: Thank you.

11 MR. MILLER: I have filed an opposition
12 to the petition for reconsideration yesterday. I
13 believe you have that. I won't reiterate my
14 comments there. I believe the prior decision is
15 fully supported by the record.

16 And that the issue that was lately
17 raised by Mr. Briggs he just referred to with
18 regard to the constitutional aspects of the use of
19 recycled water is also without merit.

20 So I have nothing further.

21 CHAIRMAN KEESE: Thank you.

22 All in favor?

23 (Ayes.)

24 CHAIRMAN KEESE: Opposed? The decision
25 is confirmed. Thank you.

1 MR. ROWLEY: I'm sorry, I'm still a
2 little confused about item 5.

3 MR. MILLER: This is Mr. Joe Rowley
4 speaking, the Vice President of Semptra Energy
5 Resources.

6 MR. ROWLEY: I heard the Commission --

7 CHAIRMAN KEESE: We took two actions.
8 We accepted the motion for reconsideration. Then
9 we reconsidered and affirmed our previous
10 decision.

11 MR. ROWLEY: Okay, I heard that with
12 respect to item 6. I did not hear the second half
13 with respect to item 5. Did that occur?

14 CHAIRMAN KEESE: Item 5 is construed as
15 a motion for reconsideration.

16 MR. CHAMBERLAIN: The Commission
17 construed item 5 as a motion for reconsideration
18 on procedural grounds. The allegation that Mr.
19 Briggs had been precluded from giving comments.

20 The Commission, as I understand it,
21 granted that petition for reconsideration for the
22 purpose of hearing any additional arguments that
23 Mr. Briggs wished to present to the Commission.

24 Mr. Briggs apparently was not prepared
25 to give additional arguments, and therefore the

1 Commission has now considered the petition for
2 reconsideration that he presented on behalf of his
3 client, and has reaffirmed its decision, that is
4 its decision on reconsideration.

5 MR. ROWLEY: I heard that with regard to
6 item 6, because the Commission did reaffirm its
7 August 6th decision. But with regard to item 5, I
8 didn't hear a vote. Is it the same thing?

9 MR. MILLER: I believe what you're
10 trying to say, Mr. Chamberlain, it is the
11 identical result.

12 MR. CHAMBERLAIN: Yes.

13 MR. MILLER: And the petition to nullify
14 was not -- the petition to void the decision was
15 not granted, is that correct?

16 CHAIRMAN KEESE: And I'm going to
17 interrupt here, again, so that we have not messed
18 ourselves up.

19 Mr. Shoemaker, I acknowledged your
20 presence at the front end, and we've not -- he
21 said he --

22 MR. KRAMER: Mr. Shoemaker was staff
23 available on call if needed.

24 CHAIRMAN KEESE: Thank you, thank you.
25 I don't want to head into another procedural

1 morass here.

2 Ms. Gefter.

3 MS. GEFTER: Regarding item 5 and the
4 potential confusion which Mr. Chamberlain has
5 tried to clear up, I think perhaps it would be
6 best if it came from the Commission, itself, as to
7 what you did.

8 And perhaps Commissioner Geesman could
9 summarize for us again what happened on item 5.

10 COMMISSIONER GEESMAN: We granted Mr.
11 Briggs' petition -- excuse me, we construed Mr.
12 Briggs' motion as a petition for reconsideration.
13 We granted it on procedural grounds.

14 We offered him the opportunity to make
15 his arguments. He declined to do so. We affirmed
16 our decision of August 6th.

17 MR. MILLER: Thank you.

18 CHAIRMAN KEESE: Thank you.

19 MR. BRIGGS: I just want to make sure
20 everyone understands that I was not conceding that
21 the request should be construed as a petition. We
22 oppose that construction. We meant it to be
23 considered for exactly what it is.

24 CHAIRMAN KEESE: Thank you. We are
25 completed with items 5 and 6.

1 We're back to item 4, SMUD. We'll let
2 people get settled, please.

3 MR. SHEAN: All right, at your
4 direction, Mr. Chairman, we met out in the hall
5 and we have a couple of clarifying changes to the
6 wording of land-1 and one other item.

7 The agreed-to language for land-1
8 commences after the words "relocated from private
9 property" and then begins "to any area already
10 analyzed by the CEC Staff in this proceeding" and
11 then recommences with the remainder of the
12 language.

13 The verification in land-1 is changes as
14 follows: Following the word "statement" and the
15 rest of what's provided in the errata is stricken,
16 we begin with the language provide a statement,
17 quote, "identifying any such change 30 days prior
18 to construction in that area, or a time mutually
19 agreed to by the project owner and CPM."

20 I believe, and they can verify, that
21 that is the language that is now agreed to between
22 the staff and the applicant.

23 MS. HOLMES: I believe that the phrase
24 in land-1, the additional language follows the
25 word "relocated" not private property.

1 MR. COHN: Either one is fine with us.

2 MR. SHEAN: Okay.

3 CHAIRMAN KEESE: Okay.

4 MR. SHEAN: And staff has -- at the
5 request of staff and their comment on the page 3
6 of the Executive Summary we're going to strike the
7 word "expedited review" since it's unclear whether
8 that was, at least in staff's mind whether that
9 was intended to be a general adverb or was a term
10 of art applied to a particular type of proceedings
11 at the Commission. So to avoid any confusion
12 there we'll just take the word out.

13 CHAIRMAN KEESE: Acceptable to SMUD?

14 MR. COHN: Yes.

15 CHAIRMAN KEESE: Both of those are?

16 MR. COHN: Yes.

17 CHAIRMAN KEESE: Does that cover all the
18 issues raised by staff?

19 MR. SHEAN: I think the only thing
20 that's left is the bio-12 that they commented on,
21 and the use of the Army Corps of Engineer 404
22 permit.

23 I think the Committee's view of this was
24 the following: We had other language in the PMPD
25 more than 25 feet, but we believe that given the

1 almost extreme amount of coordination that's been
2 involved with the federal agencies over the
3 biological impacts, that what we would propose to
4 do is to use whatever the feds determine to be the
5 appropriate distance, if they specify a distance.
6 And then to include 25 feet as the minimum
7 allowable from the Commission's point of view.

8 And let me also indicate, since we
9 discussed this previously at our August 28th
10 hearing, that the Committee wants to take what I
11 would call a proscriptive approach to this. There
12 are other conditions within the decision in
13 biology which established the mitigation that's to
14 be taken to avoid contamination in this particular
15 instance of the laydown area, which currently has
16 a creek and a swale in it, which would carry water
17 toward a creek.

18 And the idea here is you're to avoid it,
19 but you can also apply certain mitigation measures
20 to assure that essentially the first rain, which
21 may contain contaminants either from automobiles,
22 trucks or other materials that may have gotten
23 into the ground, does not get into the water and
24 contaminate the creek.

25 And so we believe that the Army Corps of

1 Engineers 404 permit will deal with that, and to
2 our satisfaction. And as a backup, we have our 25
3 feet plus the prescriptive requirements to assure
4 that measures be taken so that this type of
5 material is not allowed to get into the creek.

6 CHAIRMAN KEESE: So, is that suggestion
7 that the third errata, third item is okay as it
8 is? But in no case less than 25 feet? Is that
9 acceptable to the staff now?

10 MS. HOLMES: Staff would continue to
11 respectfully recommend that the 100-foot setback
12 be adopted.

13 CHAIRMAN KEESE: But recognizing that it
14 will really be set by the Corps of Engineers?

15 MS. HOLMES: The Corps of Engineers may
16 or may not adopt a setback. The testimony in the
17 record supports 100-foot setback in the event that
18 there is no Army Corps recommendation, in staff's
19 opinion.

20 CHAIRMAN KEESE: Okay, and SMUD's
21 recommendation is?

22 MR. COHN: We support the Committee
23 proposed errata. And we believe the record does,
24 in fact, support a 25-foot setback with the
25 additional mitigation referenced, and with the

1 condition that we do whatever is required under
2 the Army Corps 404 permit.

3 CHAIRMAN KEESE: Commissioner Pernell.

4 COMMISSIONER PERNELL: Mr. Chairman,
5 question for staff. Is it common for the Army
6 Corps of Engineers to do a 404 permit?

7 MS. HOLMES: Yes, it is.

8 COMMISSIONER PERNELL: Is there some
9 reason you think they won't do it this time?

10 MS. HOLMES: No. The Army Corps is
11 going to have to issue a 404 permit. But there is
12 some question as to whether or not that permit
13 will contain a setback.

14 COMMISSIONER PERNELL: Okay, let me
15 rephrase my question, I guess. Does the Corps of
16 Engineers commonly include setbacks in their 404
17 permit?

18 MS. HOLMES: I don't know. I just know
19 that I was told by biology staff when we were
20 discussing the errata yesterday afternoon that the
21 Army Corps permit may not specify a setback, and
22 that staff's testimony had included a 100-foot
23 setback.

24 And staff specified the reasons for
25 that. Those reasons were also reiterated in our

1 comments on the PMPD, since the 25-feet setback
2 comes from a recommendation made by SMUD in its
3 PMPD comments.

4 MR. SHEAN: Commissioner Pernell, I
5 think it's very clear that the Army Corps of
6 Engineers in its 404 permit has knowledge of the
7 fact that there are these two creeks; understands
8 the use of the laydown area; and will mitigate
9 against the possibility that first rain or any
10 other runoff will cause contamination to flow from
11 the laydown area into the creek. And that that is
12 a fundamental purpose of the 404 permit.

13 And it will be addressed by them either
14 in a setback or some other manner that's
15 sufficient to assure that there will not be an
16 impact from materials that are left in the laydown
17 area to get into the creek.

18 CHAIRMAN KEESE: All right.

19 MR. SHEAN: Let me recommend, then, Mr.
20 Commissioner, that your motion be modified to say
21 not only the PMPD and the errata, but the
22 amendments that I've just enumerated to the
23 errata.

24 CHAIRMAN KEESE: I have one question. I
25 thought I had heard on page 2 to add -- that staff

1 had asked that we add a number of bio additional
2 sections.

3 MR. SHEAN: Oh, that's fine. That's no
4 big deal.

5 CHAIRMAN KEESE: Is that covered?

6 MR. SHEAN: That's fine. Yes.

7 CHAIRMAN KEESE: You wanted to add three
8 different --

9 MR. SHEAN: Sure, and I should just say
10 we've already said the conditions of
11 certification, including but not limited, so
12 fundamentally it's from the front cover to the
13 back cover. I have no problem adding in the ones
14 that they enumerated.

15 CHAIRMAN KEESE: Okay.

16 COMMISSIONER PERNELL: Mr. Chairman, we
17 took a recess from this item to have the staff,
18 applicant and the Committee work together to try
19 and come to some resolution on this.

20 And my question is very simple. Has
21 that been done on all items? With the exception
22 of the setback.

23 MR. SHEAN: I would say yes.

24 MR. SHETLER: Our understanding, yes.

25 Other than the setback, we have agreement on the

1 other items that were raised.

2 MS. HOLMES: Staff would continue to
3 prefer a timeline be included in the discussion of
4 the scope of review for phase two, but I wouldn't
5 characterize that at this point as a disagreement
6 between us and the Committee; it's a preference.

7 COMMISSIONER PERNELL: And that is the
8 burden of proof if it's three years or after three
9 years?

10 MS. HOLMES: That's correct.

11 MR. COHN: We're indifferent on that.
12 Whatever. We agreed to both, so --

13 (Laughter.)

14 MR. COHN: -- either/or is fine.

15 COMMISSIONER PERNELL: Mr. Chairman, as
16 a point of order and procedural matter, maybe I
17 should ask my counsel, should I withdraw my motion
18 and restate a new motion that will include the
19 errata of September 9th?

20 MR. CHAMBERLAIN: Yes, that would be,
21 together with the corrections that have been
22 discussed here. Is that what you mean?

23 COMMISSIONER PERNELL: Yes.

24 MR. CHAMBERLAIN: Yes.

25 COMMISSIONER PERNELL: All right. Mr.

1 Chairman, I would withdraw my previous motion on
2 the adoption of the PMPD.

3 CHAIRMAN KEESE: With the concurrence of
4 the second?

5 COMMISSIONER GEESMAN: Absolutely.

6 COMMISSIONER PERNELL: And, Mr.
7 Chairman, I'd move the adoption of the Committee's
8 Presiding Member's Proposed Decision for the
9 Cosumnes Power Plant with the September 8th errata
10 and September 9th errata with the additional
11 corrections that were discussed here today.

12 COMMISSIONER GEESMAN: Second.

13 CHAIRMAN KEESE: Motion, Pernell.
14 Second, Geesman.

15 All in --

16 MR. CHAMBERLAIN: Before you -- just --

17 CHAIRMAN KEESE: Mr. Chamberlain.

18 MR. CHAMBERLAIN: I guess you do need to
19 clarify which way you're going with respect to the
20 setback.

21 CHAIRMAN KEESE: We are accepting the
22 setback the way it is.

23 COMMISSIONER PERNELL: Yes, that's
24 correct. With the 404 permit.

25 CHAIRMAN KEESE: All in favor?

1 (Ayes.)

2 CHAIRMAN KEESE: Opposed? Adopted three
3 to nothing.

4 Thank you, everyone, for your patience.

5 I probably should have said at the
6 beginning of this, as you all know the September
7 17th meeting is over. Our next official meeting
8 will be on October 8th.

9 The minutes, do I have a motion for the
10 approval of the minutes of September 3rd?

11 COMMISSIONER GEESMAN: So moved.

12 COMMISSIONER PERNELL: Second.

13 CHAIRMAN KEESE: Motion, Geesman;
14 second, Pernell.

15 All in favor?

16 (Ayes.)

17 CHAIRMAN KEESE: Opposed? Adopted three
18 to nothing.

19 Commission Committee and Oversight.
20 Seeing none.

21 Chief Counsel's Report.

22 MR. CHAMBERLAIN: I think you've heard
23 enough from me today.

24 CHAIRMAN KEESE: Thank you. Executive
25 Director's Report.

1 MR. THERKELSEN: Nothing to report,
2 Commissioners.

3 CHAIRMAN KEESE: Thank you. Public
4 Adviser's Report.

5 MR. THERKELSEN: She is out of town
6 today.

7 CHAIRMAN KEESE: Thank you. Any public
8 comment?

9 MS. PEASHA: Yes. I talked with the CPM
10 for Cosumnes Power Plant this morning regarding
11 the test pile program that the Board or that the
12 Committee okayed for them to go out there and do
13 some test piling. Their comment -- the letter
14 states that the test pile program was going to be
15 approximately one week with four days of test
16 piling.

17 They have been out there now for four
18 weeks, and still have their -- and still have men
19 working out there.

20 I'm appalled at the fact that you, as
21 Commissioners, have accepted this without taking
22 into consideration the other alternative sites,
23 which would be to the ratepayers best benefit.

24 The staff, in her errata, had one
25 stipulation in there regarding taking a look at

1 those, which she evidently decided not to bring up
2 at this meeting.

3 And for the last 18 months I have, from
4 the beginning, looked at the other site projects.
5 And the cost that SMUD has put on the ratepayers
6 at this point is astronomical. And with the
7 exceptions of the second phase of this there are
8 so many unknowns that are going to cost more --
9 the ratepayers more money.

10 And I can't believe, sitting up there,
11 that this Commission has voted with that, without
12 even taking in consideration the five days that
13 was predated on that PMPD. That is clearly
14 negligence on your part.

15 And I will put --

16 CHAIRMAN KEESE: Ms. Peasha, I will say,
17 you know, this Commission takes a lot of things
18 into consideration in the process. One thing that
19 we don't take into consideration is the prudence
20 of the developer in deciding to invest in a
21 project. That's totally beyond our control.

22 MS. PEASHA: But --

23 CHAIRMAN KEESE: Now, if you're in the
24 SMUD District that's an issue that you can take up
25 at SMUD meetings. But when a developer comes

1 before us what we make sure is that all
2 environmental impacts are mitigated. All are
3 mitigated to less than significant.

4 MS. PEASHA: But as Commissioners do you
5 not have the right to deny them on the fact that
6 there's a site --

7 CHAIRMAN KEESE: That they're making
8 this -- if they --

9 MS. PEASHA: -- that could be -- that
10 could be --

11 CHAIRMAN KEESE: -- if there is a site,
12 the proposed site must be made as good as that
13 site. That's --

14 MS. PEASHA: At any cost, is that right?

15 CHAIRMAN KEESE: We do not look at the
16 cost to the developer. That's a discretionary act
17 of the developer. But we make sure that this site
18 is mitigated to the best alternative site there
19 is.

20 MS. PEASHA: Is SMUD not a consumer-
21 owned municipality?

22 CHAIRMAN KEESE: Yes, they are, and --

23 MS. PEASHA: So, that I am --

24 CHAIRMAN KEESE: -- I would gather --

25 MS. PEASHA: -- one of those owners --

1 CHAIRMAN KEESE: -- I would gather
2 you're a voter in that process, so you're fully --
3 you were speaking to the SMUD Board this morning,
4 and you're speaking to SMUD management. And SMUD
5 does have meetings. So, that's the forum in which
6 to talk about the prudence of their investments,
7 whether it's nuclear, geothermal, solar or a gas
8 plant.

9 But it's not before us, in any of our
10 cases, the prudence of the developer. It's just
11 not on our table.

12 MS. PEASHA: Well, anyplace would be,
13 after mitigation, would be an approved site.
14 That's -- the cost of something has to be in the
15 best interests of the community, also. And how
16 can you say running and using all the
17 environmental impacts still not be -- one of the
18 things that should be mitigated within your right,
19 within your foreseeing it.

20 They still not have finished all their
21 mitigation. And I just -- and I believe the
22 ratepayers of SMUD have been uninformed on this.

23 COMMISSIONER GEESMAN: The Municipal
24 Utility District Act puts those decisions in the
25 hands of the elected board of the municipal

1 utility district, in this case SMUD.

2 We don't have any jurisdiction over
3 those questions. Our jurisdiction is
4 environmental, as the Chairman explained.
5 Ratepayer impacts, under the law, are best
6 addressed to the elected officials that form the
7 SMUD Board. And several of them are here today.

8 MS. PEASHA: And one of them presides as
9 a Hearing Commissioner, or you used to be on the
10 Board of Trustees, is that correct, Mr. Pernell?

11 COMMISSIONER PERNELL: Say that again?
12 I'm sorry?

13 MS. PEASHA: You used to preside on the
14 Board for SMUD.

15 COMMISSIONER PERNELL: Yes, I was duly
16 elected to the Board of SMUD and served four years
17 there, one year as President.

18 MS. PEASHA: And so there's no conflict
19 of interest here?

20 COMMISSIONER PERNELL: I'm not on the
21 Board now. I'm a ratepayer. Listen, I'm
22 sympathetic to your argument about costs. But I
23 think what is being said here is that this is not
24 the venue to make that argument. The venue is
25 before the SMUD Board at a regular SMUD Board

1 meeting.

2 MS. PEASHA: Thank you.

3 CHAIRMAN KEESE: Thank you. This
4 meeting is adjourned.

5 (Whereupon, at 12:33 p.m., the special
6 business meeting was adjourned.)

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I, PETER PETTY, an Electronic Reporter,
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it was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
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